

Chapter 3

Federal and Intergovernmental Collaboration

This chapter includes five main sections: Federal and Intergovernmental Collaborative Relationships; Characteristics of Effective Collaborative Relationships; Barriers to Effective Collaborative Relationships; Training Emphasis; and Best Practices for Intergovernmental Collaboration.

Federal and Intergovernmental Collaborative Relationships

Summary

This section includes the following topics: Federal and Intergovernmental Collaborative Relationships General, CEQ Regulations, Multi-Agency Coordination, NEPA Delegated Review Procedures, Cooperating Agency Relationships, and Lead Agencies and Joint-Lead Relationships.

Federal and Intergovernmental Collaborative Relationships General – A number of respondents urge the Task Force to encourage and increase intergovernmental collaboration. In particular, people ask the Task Force to encourage stronger roles for state and local governments—by giving state and local governments more involvement in the NEPA process; by encouraging local government participation early in NEPA planning; by encouraging federal agencies to contact local government entities and inform them of their role in the collaboration process; and by clarifying cooperation and coordination language in resource statutes. Some suggest that the Task Force should require an early participation status and consistency review form signed by a representative of the local government as part of NEPA documentation. One state agency adds that “there is great value in providing opportunities for state and local governments, particularly resource management agencies, to participate in the NEPA process at a level below joint lead but above the general public.”

According to a number of respondents, the Task Force should encourage greater state responsibility for administering NEPA processes. To that end, some suggest that states be certified to administer NEPA programs, while several others advocate that states be delegated the authority to oversee the review process for environmentally benign projects.

Several elected officials and industry representatives say the Task Force should encourage federal agencies to coordinate NEPA planning with state and local environmental review requirements. Notes one respondent, “Federal agencies need CEQ guidance for incorporating local environmental and resource plans [and] ordinances into the federal compliance procedures. The BLM NEPA Handbook has some instructions for their personnel regarding the incorporation of some federal agency analyses and documentation into the federal agency NEPA process. But even with the BLM, it leaves their staff uninformed about how to deal with this section of CEQ.” In the same vein, some argue that collaborative NEPA processes work best in states with existing environmental impact laws, since in those cases “state and local agencies are already familiar with general concepts of environmental impact assessment and are, therefore, more willing to

cooperate in joint planning efforts.” Likewise, several respondents insist that NEPA should not be used “to federalize land use decisions that we believe should be left at the state and local level.” To counter the potential for such federalization, respondents suggest that federal agencies be allowed to adopt state environmental documents as NEPA equivalents. Respondents also advise the Task Force to encourage state specific solutions to environmental problems unique to the individual state inasmuch as “state environmental agencies are better positioned to implement environmental policy and address local concerns than national agencies.”

Additionally, several individuals and tribal representatives emphasize the need for greater collaboration with American Indian tribes. These respondents ask the Task Force to identify the legal requirement for government-to-government relations with American Indian tribes; to clarify mechanisms for consultations between American Indian tribes and the federal government; and to encourage the designation of American Indian tribes as the responsible government official for NEPA processes.

Finally, a few respondents express misgivings about the effects of interagency cooperation on public involvement. One individual writes, “I am concerned that, in the past, so much deference has been given to include state, local, and tribal governments in pre-project planning, that when the public is brought into the process the decision has all but been made. Interagency cooperation should work in an efficient manner that recognizes the expertise of each governmental entity. However, don’t shut out the public.”

CEQ Regulations – A number of respondents advise the Task Force to amend existing regulations to encourage greater cooperation with local governments and encourage tribal participation. One individual writes, for example, “There is already some good regulatory language requiring the federal government to cooperate with state and local governments in the NEPA process. However, the role of state and local governments continues to be largely advisory and, in actual practice, the federal agencies exercise a lot of discretion and, in many cases, barely acknowledge the local governments.” Another writes, “If the federal agencies are reluctant to coordinate among themselves, they are downright resistant to coordinating with American Indian Tribes . . . Revise the Council on Environmental Quality Regulations to require agencies to seek cooperating agency status of tribes that have special expertise or jurisdiction where trust resources may be affected.”

Multi-Agency Coordination – Many respondents encourage greater multi-agency coordination in NEPA processes. In particular, writers ask that agencies collaborate more on NEPA in order to avoid duplication of effort, and to coordinate time frames for NEPA review with those for agency planning processes. According to one federal agency, “It is not totally clear whether timelines for specific actions and decisions under the Endangered Species Act can be integrated satisfactorily with the timelines for actions and decisions under NEPA. NMYS recommends that CEQ undertake a comprehensive review of this matter so as to identify the particular problems and recommended solutions for use by agencies. There are likely other natural resource management statutes that pose problems for integrating NEPA timelines and decision points” In order to improve collaboration, some encourage development of a process to address and monitor differences among agencies.

One point of disagreement among respondents involves the issue of coordinated—or concurrent—reviews. An industry representative advocates that “agencies with other environmental and regulatory authority over the action due to statutes such as the Endangered

Species Act or the Coastal Zone Management Act, should be required to conduct those reviews concurrently with the agency conducting the NEPA analysis. Without such coordination, a decision-making process can take many years, and sometimes face perpetual gridlock.” On the other hand, a preservation/conservation organization counters that “environmental reviews cannot occur concurrently because it is only through the NEPA process that sufficient information can be gathered to make decisions regarding wetlands, endangered species, etc. Therefore, coordinated review would require agencies to make uninformed decisions, contrary to a key goal of NEPA.”

NEPA Delegated Review Procedures – A few respondents direct their remarks specifically to delegated review procedures. Suggestions include rewriting the delegation review procedures to emphasize the goal of consolidating the review process when multiple level reviews are required; clarifying the procedures to require federal agencies to include a section regarding NEPA compliance and cooperation in cases of multiple actions; and amending delegation agreements to coordinate all reviews at the funding agency NEPA EIS level with only one set of public hearings and reviews on a project.

Cooperating Agency Relationships – A number of respondents urge the Task Force to encourage agencies to extend cooperating agency status to state, local, and tribal governments—because these governments best understand local issues; because they have a large stake in federal activities in their jurisdiction; because many local governments already have committees in place to work with federal agencies; and because such cooperation will improve the quality of NEPA analysis. One agriculture industry representative writes, for example, “We believe the quality of NEPA analyses will greatly improve if state and local governments are provided more participation in the process. The law allows for ‘cooperating agency’ status, whereby agencies participate as full partners in the process. State and local governments should automatically be provided the opportunity to participate as ‘cooperating agencies’ for any NEPA analysis conducted within their jurisdictions.” According to some, there should be such a strong presumption in favor of granting cooperating agency status to local governments that “the burden should be on the agency to show why a county should not be granted cooperating agency status and a refusal should be a decision that can be appealed.”

Lead Agencies and Joint-Lead Relationships – The topic of lead agencies and joint-lead relationships is of interest to a number of respondents. Some write in general that the Task Force should better define the roles of the lead agency and should require lead agencies to follow all pertinent regulations, policies, procedures, and directives.

A few people offer suggestions regarding the selection of the lead agency. According to some, the Task Force should require agreement on which agency will act as the lead reviewer for non-EIS projects requiring multiple level reviews; according to others, the Task Force should require the agency with direct stewardship and expertise regarding the affected resource to assume lead agency status. A few say that state agencies should not be designated lead agency on the grounds that state agencies have “made an ongoing enterprise of circumventing NEPA requirements.”

There is some disagreement over whether the lead agency should be recognized as the single lead agency for decisionmaking. According to one state agency, “The federal government does not speak with one unified voice, but comes across as fragmented with numerous conflicting agendas and objectives. Environmental documents are sent to 13 separate federal agencies for review, comment, and/or approval. The lead federal agency should have the authority to speak as

the sole federal voice on federal projects. A single public interest finding is critical for efficient and effective decisions.” A preservation/conservation organization counters, however, that recognizing one lead agency as the single lead agency for decisionmaking “takes authority away from agencies that have expertise, and a legislative mandate for environmental protection, regarding a particular issue. Furthermore, consolidation in a single federal agency takes power away from local and state agencies that may be more responsive to local concerns.”

In addition to the above points regarding lead agency designation, respondents ask the Task Force to encourage lead agencies to view cooperating agencies as partners; to designate a lead agency to resolve interagency disagreement over scientific interpretation; and to grant the lead agency greater decisionmaking authority, including the authority to develop the document and set deadlines for agency input and decisions. A few respondents caution, however, that designation of a lead agency may not improve the process. Notes one: “Although the CEQ regulations provided for a ‘lead’ agency when multiple agencies are involved in complying with NEPA for a proposed action, the lead agency can be powerless to complete the NEPA process.”

Several respondents also comment on the use of joint-lead agency relationships. According to some, the Task Force should encourage greater use of joint-lead agency relationships because joint-lead projects facilitate creation of an “economy of scale” that will better address broad-level resource concerns. Some suggest that agencies should be required to inform property owners and local governments of the availability of a joint-lead relationship, since “a large majority of the people are not aware of this rule and the agencies do not do anything to inform the people.” Finally, a few charge that the joint-lead process is not employed fairly. One individual observes, “The agencies come in and determine who will agree with them, they then exclude all of us that may not give [them] what they want to hear. . . . The joint process does not allow us our stand to say this will harm us and we can’t agree.”

Federal and Intergovernmental Collaborative Relationships

General

724. Public Concern: The CEQ Task Force should encourage and increase intergovernmental collaboration.

We suggest increasing inter-governmental collaboration and we applaud the efforts of the current and previous Council on Environmental Quality Administrators to encourage it. (Office of Species Conservation, Boise, ID - #578.7.30100.XX)

IN NEPA REGULATIONS

In its NEPA regulations, the Council on Environmental Quality might consider placing greater emphasis on, or even requiring, the use of collaborative agreements that establish joint-lead or cooperating agency status. (National Oceanic and Atmospheric Administration, Washington, DC - #637.18.30700.XX)

725. Public Concern: The CEQ Task Force should address the willingness of the federal government to collaborate with local governments.

As a general statement, we feel that the federal government has not been interested or responsive to collaboration with local (i.e. county) governments. Many producers have sought to engage the federal agencies in the process on a local level only to be frustrated by the federal agency’s attitude of “we’ll listen but we aren’t going to address your concerns.” Only recently have the federal agencies even acknowledged that local governmental entities should even be invited to the table. Even then, the

process has been more towards a briefing process instead of a true collaborative process, where local concerns are legitimately addressed. (Agriculture Industry, Laramie, WY - #644.2.10430.XX)

726. Public Concern: The CEQ Task Force should encourage stronger roles for state and local governments.

Perhaps even stronger roles for state and local governments would be helpful, on the front end of proposals, or building Environmental Assessment or EIS, or scopes, or supporting documentation for consideration. (Individual, Oak Ridge, TN - #304.2.10310.A2)

BY GIVING STATE AND LOCAL GOVERNMENTS MORE INVOLVEMENT IN THE NEPA PROCESS

State and local governments should be given more involvement in the NEPA process. (Agriculture Industry, Susanville, CA - #441.11.10310.XX)

This letter supports streamlining the NEPA process and using it more effectively to ensure state government input and federalism.

States should have significant input to federal agency decisions, particularly when those agencies reside within the state being affected. As a former Governor, President Bush understands this concern very well. (State of Tennessee, No Address - #543.1.10310.XX)

It is vital that county governments be key players in the federal planning process. It is very ironic that those counties whose very existence depends on how their county's federal land base is managed are generally so poor that they do not have the resources to participate meaningfully in the planning process. (Willy Hagge, Supervisor, Modoc County Board of Supervisors, Liberty, MO - #2.10310.XX)

BY ENCOURAGING LOCAL GOVERNMENT PARTICIPATION EARLY IN NEPA PLANNING

Early planning participation is also evaded in NEPA planning. A federal agency manager recently told the Kane County Resource Development Committee that the county was not qualified to conduct planning with his scientists. That position is questionable, particularly regarding socio-economic issues. Federal law provides for early planning cooperation but those options are seldom, if ever, utilized. Instead, local governmental entities are mailed draft Environmental Assessments after planning alternatives are developed. By then the preferred alternative has been selected and further comment and participation is a mere formality, as the preferred alternative is always selected in the final decision. Local government should participate in NEPA planning during alternative development if local interests are to be meaningfully considered. (Individual, Kanab, UT - #537.2.10310.XX)

I have found that state input and a unique form of federalism can be achieved when the state gets involved early. Determining study questions, identifying alternatives and collecting information are needed for a sound state and federal policy decision. Through early involvement, we have seen federal decisions incorporate and respond positively to state policy needs. (State of Tennessee, No Address - #543.6.10310.XX)

The role of local governments should be recognized and encouraged/allowed to participate in the NEPA process from the earliest stages. (Cloyd Harrison, et al, Commissioners, Uintah County Board of Commissioners, Vernal, UT - #468.2.10310.XX)

BY ENCOURAGING FEDERAL AGENCIES TO CONTACT LOCAL GOVERNMENT ENTITIES AND INFORM THEM OF THEIR ROLE IN THE COLLABORATION PROCESS

Federal agencies need to contact and establish working relations with local governments early and allow these entities an equal role in the process. Some counties may or may not know they even have a role in the NEPA process, and a proactive effort by the agencies to involve them early on would only help to improve the process.

We feel . . . federal agencies should establish an outreach program with the goal of helping local governments understand how they can participate in the process. Once this relationship is established,

then the agencies need to make a concerted effort to actually listen to the input provided and also attempt to work with the local entities on an equal footing basis. (Agriculture Industry, Laramie, WY - #644.3,4.30100.XX)

BY CLARIFYING COOPERATION AND COORDINATION LANGUAGE IN RESOURCE STATUTES

Council on Environmental Quality should clearly delineate what the cooperation and coordination language, which exists in almost all resource statutes, means and monitor agency compliance.

Council on Environmental Quality should eliminate the phrasing in the regulations that indicate that the primary reason for this cooperation is to eliminate duplication. While this is one reason, the emphasis should be on giving local government a right to meaningful participation at the planning table. This participation should be on an equal footing, particularly if the county has developed a local resource plan. (Willy Hagge, Supervisor, Modoc County Board of Supervisors, No Address - #636.6,8.30100.XX)

BY REQUIRING AN EARLY PARTICIPATION STATUS AND CONSISTENCY REVIEW FORM SIGNED BY A REPRESENTATIVE OF THE LOCAL GOVERNMENT AS PART OF NEPA DOCUMENTATION

Local government has no real recourse regarding lack of compliance with NEPA statutory and regulatory mandates under the current CEQ regulations. Early participation status and a consistency review form signed by a representative of the local government entity should be required as part of the NEPA planning action and documentation. (Individual, Kanab, UT - #537.4.10310.XX)

727. Public Concern: The CEQ Task Force should allow state and local governments to participate in the NEPA process at a level below joint lead but above the general public.

State agencies are often treated exactly like the public in NEPA analysis. Our considerable knowledge and experience is minimized under these circumstances and the NEPA process, documents, and analysis suffer as a result. We feel there is great value in providing opportunities for state and local governments, particularly resource management agencies, to participate in the NEPA process at a level below joint lead but above the general public. (Idaho Department of Fish and Game, ID - #579.7.10310.XX)

728. Public Concern: The CEQ Task Force should encourage greater state responsibility for administering NEPA processes.

BY PROVIDING FOR STATE CERTIFICATION TO ADMINISTER NEPA PROGRAMS

States need flexibility in process design and compliance: The state Departments of Transportation have been directly responsible for NEPA compliance in transportation programs for 30 years. The states have the personnel, expertise and experience necessary to implement programs to meet local needs. States also have experience in the implementation of other federal agency NEPA regulations. The CEQ task force should acknowledge this and provide for state certification to administer NEPA programs.

Flexibility: CEQ should allow applicants, such as state highway administrators, the opportunity to develop their own procedures to implement NEPA. These procedures could be certified by the lead federal agency as meeting NEPA requirements. (Virginia Department of Transportation, No Address - #203.7.10300.XX)

BY DELEGATING AUTHORITY TO STATE ENVIRONMENTAL AGENCIES FOR ACTIONS ON ENVIRONMENTALLY BENIGN PROJECTS

Delegation of Authority: CEQ should encourage the delegation of authority to state environmental agencies for actions on environmentally benign projects as a key component of a long-term strategy to improve the process. For example, American Council of Engineering Companies believes that United States Department of Transportation and federal environmental resource agencies should be required to implement programs to delegate authority to willing and able state counterpart agencies for Environmental Assessments, Findings of No Significant Impact and Categorical Exclusion projects, using a post-audit quality assurance process to ensure adherence to federal requirements. Environmental agencies should conserve their limited resources to focus attention upon the relatively small number of

projects that involve significant environmental issues. Various models exist for implementing the delegation process, such as Section 404 wetland permitting in New Jersey and Michigan, and Section 106 historic preservation procedures in Vermont. These have been described in a recently completed American Association of State Highway and Transportation Officials requested study funded under the National Cooperative Highway Research Program. (Business, Washington, DC - #470.12.10300.XX)

United States Department of Transportation and federal environmental resource agencies should be required to implement programs to delegate authority to willing and able state counterpart agencies for environmental assessment/Finding of No Significant Impacts and categorical exclusion projects, using a post-audit quality assurance process to ensure adherence to federal requirements. Environmental agencies should conserve their limited resources to focus attention upon the relatively small number of projects that involve significant environmental issues. (Transportation Interest, Washington, DC - #472.14.30100.XX)

729. Public Concern: The CEQ Task Force should encourage federal agencies to coordinate NEPA planning with state and local environmental review requirements.

We see a need to coordinate NEPA efforts with the states. We agree with comments made by the Edison Electric Institute (EEI) in its October 31, 2001 letter to the White House Interagency Task Force on Energy Project Streamline. EEI's letter says that: "NEPA requirements should be coordinated with state environment review requirements and that these reviews should be coordinated so that they are completed cooperatively among the federal and state agencies in parallel rather than in series." Again, application of this principle would also help streamline the permitting process. (Utility Industry, Duluth, MN - #108.2.30000.XX)

Area in need of specificity is the concept of "duplication of effort" in 1506.2(c). Catron County Commission has its own environmental planning and review ordinance, "affectionately" referred to as the County's "mini-NEPA." It's a process that mirrors NEPA. Yet, federal agencies appear to be blind or uninformed about this section of CEQ regulations. Federal agencies need CEQ guidance for incorporating local environmental and resource plans, ordinances into the federal compliance procedures. The BLM NEPA Handbook has some instructions for their personnel regarding the incorporation of some federal agency analyses and documentation into the federal agency NEPA process. But even with the BLM, it leaves their staff uninformed about how to deal with this section of CEQ.

Also, CEQ section 15062(d) makes reference to the consistency requirements—similar to the "consistency review" requirements in the Federal Land Management Act and the National Forest Management Act. The experience in Catron County and other federal land dependent counties in the Southwest has been another one of frustration—with federal agencies avoiding this topic and requirement, as if to say, "we don't want to face the fact that the proposed federal action may be inconsistent with local county ordinances, or, state law." Instead, local, state and federal agencies need to take this head on through coordinated process in NEPA to identify the consistent and inconsistent laws, ordinance, plans, etc. Only after we can see the "fit" and the "space", can we effectively move forward with collaborative planning and management of natural resources and environmental quality. (Carl Livingston, Chairperson, Catron County Board of Commissioners, Reserve, NM - #564.5.10500.XX)

TO ACHIEVE A SINGLE MULTI-AGENCY, STATE POLICY DECISION

It is important to note why the NEPA process works for states and how we duplicate that process for our own policy best practices. In Tennessee we have organized a network of state agency contacts in every state agency. This network develops technical comments, which are forwarded to a policy team. The policy team then digests the information and packages recommendations for the Governor's Office to review and consider. Often, new alternatives or options emerge at the Governor's level, based on the detailed, "bottom-up" input of state experts. Political considerations can then be effectively addressed

after the state experts have voiced their technical concerns through drafts of NEPA documents submitted to us and through our analysis.

The result of proper state coordination is a single multi-agency, state policy decision. It is communicated to the federal agency, within the comment period and supported by technical analysis. The NEPA process also allows the state to vet with the public its policy decision. This process works extremely well to ensure that federal agencies consider both technical knowledge that is increasingly the domain of state experts and the political preferences of a state's leadership and at times its population. (State of Tennessee, No Address - #543.11.10310.XX)

730. Public Concern: The CEQ Task Force should recognize that collaborative NEPA processes work best in states with existing environmental impact laws.

Jones and Stokes has been involved in some of the largest, most complex types of programmatic NEPA documents in the western United States. We believe strongly in the value of these types of documents for several reasons. First, programmatic NEPA documents provide the framework for integrating environmental considerations into the planning process for large, controversial plans and programs. Second, the application of NEPA plans and programs provides agencies with a familiar procedural process and familiar disclosure documents—despite the unusual complexity of the underlying activities. Third, the NEPA process encourages collaboration among stakeholders in situations where there are often multiple parties with very divergent points of view.

One example is the joint environmental impact statement/environmental impact report prepared for the CALFED Bay-Delta Program. This joint effort was undertaken by multiple state and federal agencies involved in water management in the Sacramento-San Joaquin Delta in central California. This joint effort is unprecedented in the realm of government cooperation, and one of the key elements of the project was the preparation of a joint Environmental Impact Statement/Environmental Impact Report (under the Council on Environmental Quality). NEPA provided an important part of the legal and scientific framework under which this program is being implemented. The NEPA/Council on Environmental Quality environmental study was responsible for the nature, extent, and scope of many of the environmental studies and was instrumental in the high level of inter-governmental coordination and public involvement. Additionally, the EIS will provide a valuable basis for tiering future federal and state environmental documents. As the CALFED program illustrates, NEPA appears to work best in states with their own environmental impact assessment laws. The similarity between NEPA and the Council on Environmental Quality means that state and local agencies are already familiar with general concepts of environmental impact assessment and are, therefore, more willing to cooperate in joint planning efforts. (NEPA Professional or Association - Private Sector, No Address - #530.2.10200.XX)

731. Public Concern: The CEQ Task Force should avoid federalizing land use decisions.

NAHB [National Association of Homebuilders] strongly opposes using NEPA to federalize land use decisions that we believe should be left at the state and local level. These same concerns are raised in other programs, such as forestry management, where NEPA can be used to bypass rulemaking requirements and assert federal control over local decision making. For example, in "Final Environmental Impact Statement for Tusayan Growth – Kaibab National Forest (KNF)", there seems to be significant federal influence exerted upon the development of private lands, ownership, community transportation, housing, and other community planning activities because these lands abut the KNF. The summary statements regarding the desired planning outcomes from the major federal action in this area are discussed in terms of several actions affecting the ownership and necessary procurement of nearby private lands. The acquisition of any private lands in light of the NEPA process applied to the Tusayan Growth Area involved a number of statutory and regulatory authorities that relate federal land use policy, land acquisition, and resource management, including the: (1) National Forest Management Act which regulates the process of preparing and implementing land and resource management plans for each forest; (2) Organic Act of 1916 which established resource management goals to be met by National Park Service and established some of the management tools to be used; (3) Federal Land Policy and Management Act with the authority to conduct land exchanges; (4) Federal Land Exchange Facilitation Act which recognizes land exchanges as "an important tool to consolidate land ownership

for purposes of more efficient management”; and, (5) Townsite Act of 1906 which allows a government entity to purchase federal land at not less than fair market value and only for special public use.

Because these statutes may be employed to obtain private land in any affected community, such as the Tusayan Growth Area, NAHB recommends that when these authorities are applied to private land acquisition in relation to the NEPA process, that the ensuing review process and statutory applications are consistent and fair to all affected local communities, and does not become a “federalization” process controlling major local land use policy and community development decisions. (Business, Washington, DC - #517.13-14.10510.C2)

BY ALLOWING FEDERAL AGENCIES TO ADOPT STATE ENVIRONMENTAL DOCUMENTS AS NEPA EQUIVALENTS

In order to counter the potential for “federalization” of land use decisions, NAHB also recommends that the NEPA Task Force consider reforms that would excuse federal agencies, such as the U.S. Army Corps of Engineers, from preparing NEPA documentation where an equally stringent state process, such as the California Environmental Quality Act (CEQA), is already being completed. In other words, agencies should be allowed to rely on documentation from states with equally stringent processes, and this should be considered the functional equivalent of NEPA. (Business, Washington, DC - #517.14.10510.C2)

An alternative to examine for improving NEPA implementation is to provide a process that allows federal agencies or their branches the flexibility to adopt state environmental documents as NEPA equivalents. When joint documentation is required, the federal agency or their designee could then act more as a cooperating agency. (Port of Los Angeles, San Pedro, CA - #78.3.30130.XX)

To limit duplication, the NEPA formats established by agency guidelines, not federal law or administrative rules, should allow use of little NEPA state environmental review documents. The states, after all, will probably be the primary author anyway and the public will be familiar with the state format. At the very least, the federal agencies ought to be amenable to modifications in format that both the federal agency and state feel appropriate to achieve the purposes of NEPA and the little NEPA. (Other, Washington, DC - #506.45.10230.XX)

732. Public Concern: The CEQ Task Force should encourage state specific solutions to environmental problems unique to the individual state.

A good national environmental policy encourages state-specific solutions to environmental problems unique to the individual state.

State environmental agencies are better positioned to implement environmental policy and address local concerns than national agencies. (Business, Concord, NH - #16.1.10310.XX)

A good national environmental policy encourages state-specific solutions to environmental problems unique to the individual state.

The EPA has traditionally used states and their environmental agencies as policy laboratories, in order to develop innovative solutions to national problems. The BIA (Business and Industry Association) encourages this process and form of innovation and requests that the states be further afforded the opportunity to develop state-specific solutions to environmental problems. (Business, Concord, NH - #16.2.30500.XX)

The federal government often micro-manages environmental policy and does not provide the states with necessary discretion or funding to develop innovative environmental implementation strategies.

Suggested Action:

Provide grants for the development and implementation of state programs with fewer strings attached.

Allow states greater discretion in the implementation of environmental programs.

Support greater funding to state institutions, for the development of business-academic partnerships that address environmental issues.

Support educational institutions that provide students with business internship opportunities that are geared toward dealing with industrial and business pollution control. Internship programs help produce greater technology and innovations, and give students hands-on experience, resulting in a better educated, more productive, and experienced workforce. (Business, Concord, NH - #16.8.30500.XX)

733. Public Concern: The CEQ Task Force should ensure that collaboration between the agency initiating the NEPA process and the county does not overly constrain the county's ability to address local issues.

Collaboration and coordination between the agency initiating a NEPA process and the County should not overly constrain the County's ability to address local issues. (Cloyd Harrison, et al, Commissioners, Uintah County Board of Commissioners, Vernal, UT – .2.10310.XX)

734. Public Concern: The CEQ Task Force should clarify mechanisms for consultations between American Indian tribes and the federal government.

I would like to see the Task Force clearly define mechanisms for consultations between Tribes and the Federal Government. This is one of the most complex and difficult issues that I need to deal with concerning NEPA compliance by numerous Agencies. (Bureau of Indian Affairs, Aberdeen, SD - #497.1.10600.XX)

735. Public Concern: The CEQ Task Force should encourage the designation of American Indian tribes as the responsible government official.

The Department of HUD has regulatory authority to designate Indian Tribes as the "Responsible Government Official" for the NEPA process. In the true spirit of self-determination and self-governance, this designation of authority should be one practiced throughout the Federal Government (especially in light of the NEPA experience and expertise possessed in Indian Country). (Cherokee Nation Department of Natural Resources, Tahlequah, OK - #406.4.10300.F1)

736. Public Concern: The CEQ Task Force should identify the legal requirement for government-to-government relations with American Indian tribes.

Where is the government-to-government relation required by law in respect to the American Indian Nations? Their Treaty, tribal, cultural and religious rights are continued to be trespassed upon by federal agencies with regard to the violations of the American Indian Religious Freedom Act of 1978, the Archeological Protection Act of 1979, Executive Order No. 13984 of May 14, 1998 and Executive Order 13175 of November 6, 2000. Has our County Commissioners been notified of this true intent of NEPA Task Force? What was their response? Send me a copy of their response. I want a complete list of all the 'stake holders' for this process, environmental groups. I want a list of the Indian Tribes notified of this process. Consider this my Freedom of Information Request (FOIA) 5 U.S.C. 552, with relation to all my questions in this letter. (Individual, Yellow Jacket, CO - #72.4.10600.XX)

737. Public Concern: The CEQ Task Force should not allow interagency cooperation to impede public involvement.

I am concerned that, in the past, so much deference has been given to include state, local, and tribal governments in pre-project planning, that when the public is brought into the process the decision has all but been made. Interagency cooperation should work in an efficient manor that recognizes the expertise of each governmental entity. However, don't shut out the public. (Individual, Rogue River, OR - #382.14.30500.XX)

CEQ Regulations

738. Public Concern: The CEQ Task Force should amend existing regulations.

TO ENCOURAGE GREATER COOPERATION WITH LOCAL GOVERNMENTS

There is already some good regulatory language requiring the federal government to cooperate with state and local governments in the NEPA process. However, the role of state and local governments continues to be largely advisory and, in actual practice, the federal agencies exercise a lot of discretion and, in many cases, barely acknowledge the local governments. The existing regulations are as follows:

(a) Agencies authorized by law to cooperate with State agencies of statewide jurisdiction pursuant to section 102 (2) (D) of the Act may do so.

(b) Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and State and local requirement, [1] unless the agencies are specifically barred from doing so by some other law. Except for cases covered by paragraph (a) of this section, such cooperation shall to the fullest extent possible include:

- (1) Joint planning processes.
- (2) Joint environmental research and studies
- (3) Joint public hearings (except where otherwise provided by statute).
- (4) Joint environmental assessments.

(c) Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and comparable State and local requirements, [2] unless the agencies are specifically barred from doing so by some other law. Except for cases covered by paragraph (a) of this section, such cooperation shall to the fullest extent possible include joint environmental impact statements. In such cases one or more Federal agencies and one or more State or local agencies shall be joint lead agencies. Where State laws or local ordinances have environmental impact statement requirements in addition to but not in conflict with those in NEPA, Federal agencies shall cooperate in fulfilling these requirements as well as those of Federal laws so that one document will comply with all applicable laws.

(d) To better integrate environmental impact statements into State or local planning processes, statements shall discuss any inconsistency of a proposed action with any approved State or local plan and laws (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law.

40 CFR 1506.2. To strengthen state and local participation under these guidelines, I recommend the addition of the following subsections:

(e) Except where specifically prohibited by statute, state and local governments have the right to be informed at an early state of any NEPA analysis and planning concerning national parks, national forests, or any other federal lands within their borders or, in the case of municipalities, within twenty miles thereof, and to participate as joint lead agencies in the preparation of all such NEPA documents.

(F) No document prepared pursuant to NEPA shall be complete without the concurrence and signature of the duly authorized representative of every joint lead agency.

The foregoing language would help to ensure meaningful participation by state and local governments in the NEPA process, and require the appropriate federal agency to convince the state or local government that it has adequately considered their local concerns before taking action that could be harmful to the local communities and cultures. (Individual, Bellingham, WA - #127.6.30500.XX)

The focus by the Council on Environmental Quality and federal agencies seems to be on the cooperating agency requests. There is little attention given to 40 Code of Federal Regulations section 506. It provides the language that federal agencies should jointly work with state, local and tribal governments "to the maximum extent possible", not only in environmental analyses and documentation, but also in environmental/natural resource research, public involvement and natural resource plans (United States Forest Service Forest plans and the Bureau of Land Management resource management plans). It would

be quite useful for the Council on Environmental Quality to develop guidelines and specifics to these opportunities for collaborative planning, especially trans-boundary planning and management where there's concurrent jurisdictional responsibilities. (Carl Livingston, Chairperson, Catron County Board of Commissioners, Reserve, NM - #564.4.30600.XX)

It has been my recent experience that the Council on Environmental Quality directive to involve local government entities in collaboration on development of environmental analyses is being observed in the breach. Some but not all of the federal land management agencies in the Southwest have been slow to accept this directive and in some instances downright hostile toward participation by local government entities in developing environmental analyses prior to the initiation of the formal NEPA process. You should consider strengthening that guidance. (Business, Phoenix, AZ - #547.1.30700.XX)

TO ENCOURAGE TRIBAL PARTICIPATION

If the federal agencies are reluctant to coordinate among themselves, they are downright resistant to coordinating with American Indian Tribes. Our experience in the Snohomish, Washington watershed, for example, is that the Tulalip Tribes have very good data, knowledge, skills, abilities, as well as rights with respect to certain natural resources. Yet, the agencies rarely coordinate their findings from Environmental Assessments and have never asked the Tulalip Tribes to be a cooperating agency. The federal government makes many decisions that affect the quality of tribal life, including decisions that have significant environmental effects. While the Council on Environmental Quality's regulations implementing the National Environmental Policy Act anticipate that federal agencies will ask tribes to cooperate in the preparation of environmental impact analyses, the regulations also serve to limit tribal participation.

The Council on Environmental Quality regulations implementing the National Environmental Policy Act were originally published in the Federal Register on November 28, 1978 (See 40 Code of Federal Regulations [Section] 1500.1 et seq.). At the time, those regulations made a good-faith effort to include tribal governments in the NEPA process. Specifically, 40 Code of Federal Regulations [Section] 1508.5 specifies that a state or local agency or "when the effects are on a reservation, an affected Indian tribe" may, by agreement with the lead agency, become a cooperating agency. In a number of sections, those regulations restrict tribal involvement to those instances where the effects are on a reservation. This limitation ignores the fact that tribal interests, including trust interests, may be impacted by actions that do not directly affect a reservation but which may, for example, affect traditional hunting or fishing rights that have been guaranteed by treaties entered into between the Federal government and an Indian tribe. In other sections, the Council on Environment Quality regulations wholly ignore the legitimate role of Indian tribes in the NEPA process and the government-to-government relationship between the Federal government and federally recognized Indian tribes. For example, 40 Code of Federal Regulations [Section] 1501.5(b) states that "Federal, State, or local agencies including at least one Federal agency, may act as joint lead agencies to prepare and environmental impact statement."

In the Pacific Northwest, and many other regions, the environmental effects need not fall directly upon a reservation to have catastrophic effect on the affected Indian tribe. Environmental effects on regional salmon runs dramatically affect the tribes' ability to catch or market fish, even when there is no discernable biophysical effect on the reservation. The fate of the salmon in the Pacific Northwest is not clear and many actions taken by the multiple agencies of the federal government will help determine the robustness and eventual survival of the stock. The Tulalip Tribes want a role in the analysis and the decision-making about these matters, whether or not the effects are on the reservations. The Tulalip has petitioned the Council on Environmental Quality to make necessary modifications to its regulations. In many cases the tribes have special expertise, which the federal agencies may lack.

Revise the Council on Environmental Quality Regulations to require agencies to seek cooperating agency status of tribes that have special expertise or jurisdiction where trust resources may be affected. (NEPA Professional or Association - Private Sector, Washington, DC - #450.13-14.30700.XX)

Multi-Agency Coordination

739. Public Concern: The CEQ Task Force should encourage agencies to collaborate on NEPA documents.

TO AVOID DUPLICATION

Federal and Inter-government Collaboration. Most agencies work well together to jointly prepare NEPA documents, but there are times that each agency must issue a decisions document on the NEPA decision. This adds time to the process and duplicates the appeal and in some cases the litigation before final action. All collaboration must provide for a single decision on acquired National Forest are a good example of problems with the current process. The Forest Service and Bureau of Land Management collaborate on the NEPA document for mineral actions, but each must issue a decision document. These separate documents may be appealed and litigated through each agency for the same decision. This process double jeopardy is unnecessary and adds years to the processing time. It would seem appropriate for the Forest Service and Bureau of Land Management to make one decision on the surface and subsurface impacts of mineral development actions and use one appeal system for those decisions. [The] Council on Environmental Quality could assist by insuring that the agencies coordinate all aspects of NEPA beyond collaboration of NEPA documents. This would include NEPA decisions, NEPA appeal process, and litigation process. (NEPA Professional or Association - Private Sector, Rolla, MO - #625.3.30130.XX)

740. Public Concern: The CEQ Task Force should coordinate the time frames for NEPA with those for agency planning processes.

The National Ocean Industry Association is pleased that agencies often combine their NEPA processes with their planning requirements under the Federal Land Policy and Management Act for the Bureau of Land Management, the National Forest Management Act for the Forest Service, and the Outer Continental Shelf Lands Act for the Minerals Management Service. The agencies are able to produce documents more efficiently by conducting the analyses concurrently, and producing one document instead of two. However, there are instances where the mandatory time frames for planning are longer than the mandatory time frames for NEPA. For example, the Bureau of Land Management mandates sixty days for the Governor's consistency review. This period begins to run at the same time as the thirty-day protest period for the planning document and 30-day availability period for the EIS. By changing the planning time frames to the times mandated in NEPA, valuable time can be saved, and the processes will be more efficient. (Oil, Natural Gas, or Coal Industry, Washington, DC - #61.7.10510.F1)

Incompatible Timelines and Decision Points of Other Statutes (ESA). It is not totally clear whether timelines for specific actions and decisions under the Endangered Species Act can be integrated satisfactorily with the timelines for actions and decisions under NEPA. NMYS recommends that CEQ undertake a comprehensive review of this matter so as to identify the particular problems and recommended solutions for use by agencies. There are likely other natural resource management statutes that pose problems for integrating NEPA timelines and decision points. If requested, NMFS can provide more information about this issue based on its experience reading the ESA and the Magnuson-Stevens Act. (National Oceanic and Atmospheric Administration, Washington, DC - #637.51.10520.XX)

SHOULD REQUIRE REGULATING AGENCY ACCOUNTABILITY WITH RESPECT TO RESPONSE TIMES

It would help if NEPA Task Participants could:

Require regulating agency accountability in regards to reasonable response times. This should include Federal Agencies such as USFW, FHWA, Bureau of Reclamation, Bureau of Land Management, United States Army Corps of Engineers as well as State Agencies such as CDFG and State Water Resources Control Board. (Imperial County Department of Public Works, El Centro, CA - #15.4.30000.XX)

741. Public Concern: The CEQ Task Force should require that all decisions be expertise-based and rendered by the agency with recognized knowledge and legal authority.

Expanded federal decision authority: Federal agencies are empowered beyond their existing statutory authority. Environmental agencies are now empowered to make decisions regarding project purpose and need, and regarding the development and selection of alternatives. Environmental agencies now consider themselves to be experts in traffic and other technical components of projects. All study decisions should be expertise-based and rendered by the agency with recognized knowledge and legal authority. (Virginia Department of Transportation, No Address - #203.6.10310.XX)

742. Public Concern: The CEQ Task Force should encourage development of a process to address and monitor differences among agencies.

TO IMPROVE COLLABORATION

It is our experience that collaboration among federal agencies on NEPA documents is limited and collaboration between federal and state agencies often is very poor. Often the amount and quality of communication and collaboration among federal and state agencies is about the same or less than what occurs with the general public. We believe this is a significant problem for issues affecting wildlife. We believe collaboration and communication among federal and state agencies during the NEPA documentation process must be improved and that a process must be developed to address and monitor the differences among those agencies. (Recreational/Conservation Organization, Washington, DC - #89.13.30200.B1)

743. Public Concern: The CEQ Task Force should require agencies with environmental and regulatory authority to conduct reviews concurrently with the agency conducting the NEPA analysis.

Agencies with other environmental and regulatory authority over the action due to statutes such as the Endangered Species Act or the Coastal Zone Management Act, should be required to conduct those reviews concurrently with the agency conducting the NEPA analysis. Without such coordination, a decision-making process can take many years, and sometimes face perpetual gridlock. (Oil, Natural Gas, or Coal Industry, Washington, DC - #61.5.10500.XX)

744. Public Concern: The CEQ Task Force should reject the suggestion to implement coordinated review.

Examples of the type of "streamlining" proposals that ELPC and CNT oppose because they would weaken the NEPA process and do little to actually improve NEPA implementation include:

-Coordinated Review: Most projects subject to NEPA will actually have to undergo a number of different environmental reviews under state and federal law. Coordinated review calls for requiring that these various reviews take place concurrently, rather than consecutively. In most cases, however, environmental reviews cannot occur concurrently because it is only through the NEPA process that sufficient information can be gathered to make decisions regarding wetlands, endangered species, etc. Therefore, coordinated review would require agencies to make uninformed decisions, contrary to a key goal of NEPA. (Preservation/Conservation Organization, Chicago, IL - #87.21.10200.XX)

745. Public Concern: The CEQ Task Force should encourage the U.S. Fish and Wildlife Service to participate in interagency collaboration.

Council on Environmental Quality should clarify that this joint planning also applies to United States Fish and Wildlife Service critical habitat designation and recovery plans. They should also coordinate and plan with any existing local recovery plans. (Willy Hagge, Supervisor, Modoc County Board of Supervisors, No Address - #636.8.30100.XX)

Council on Environmental Quality's sections on cooperating agencies and 1506.2 appear not to apply to the United States Fish Wildlife Service when it comes to their NEPA requirements for critical habitat designations (it should also apply to recovery plans). United States Fish and Wildlife Service is the biggest obstacle to effective intergovernmental coordination. [The] Council on Environmental Quality must bring them into the fold in order to improve the NEPA process, certainly out here in the West, of authentic collaborative intergovernmental efforts. (Carl Livingston, Chairperson, Catron County Board of Commissioners, Reserve, NM - #564.6.30100.XX)

NEPA Delegated Review Procedures

746. Public Concern: The CEQ Task Force should rewrite delegation review procedures to emphasize the goal of consolidating the review process when multiple level reviews are required.

Affects of Federal "Delegation Programs" on the NEPA Review Process

In the 1980s, the Federal Government took some positive steps to shift or delegate environmental program reviews to the state level. Although the impetus for such delegations was a reduction in federal staffing, the program has had many positive results by promoting reviews by public agencies that are closer to the ground/problem.

However, many of the delegation agreements were written as stand alone actions and programs with very specific and somewhat restrictive procedures for conducting delegated state level reviews. Typical programs delegated to the states include wetlands, coastal zone management, National Pollutant Discharge Elimination System (NPDES) discharge permits, water obstruction and encroachment permits, erosion and sedimentation controls, cultural resources and categorical exclusions for funding/grant programs. Some agreements cross multiple federal agencies/departments and/or state programs (i.e., erosion and sedimentation controls are controlled by the Department of Agriculture through the funding and regulation of County Conservation Districts and are also controlled by the US Environmental Protection Agency through the funding and regulation of NPDES permit program). Sometimes these crossover programs have conflicting goals and objectives.

Written as stand alone documents with specified procedures, many of these delegation agreements neglected to consider their affects on multi-agency level projects and NEPA level review activities. NEPA EIS reviews are typically performed by funding agencies, like the Federal Highway Administration, while NEPA delegated-level reviews are done for one specific review. The state-delegated permitting agency stated that, "they could not comment on the EIS or the potential impacts of the project because there was no pending (Permit Action) allowing them to provide comments outside of the prescribed delegation agreement steps." Since they did not have an actual Permit Application in hand to review, they felt they were prohibited from providing "Technical Review" comments on the potential impacts of the project. I have heard this type of comment on almost every project I have worked on. The delegation agreements often contain prescriptive clauses and the local level reviewers feel they are obligated to follow and enforce the specific language in their delegation agreements.

Recommendations

NEPA delegated review procedures should be rewritten to emphasize the goal of consolidating the NEPA review process where multiple level NEPA reviews are required. Flexibility to expedite the review process should be encouraged by the local reviewers.

One objection to this proposal, with respect to permit actions, may be the argument that NEPA EIS level reviews may lack specific project design details (since that is primarily a planning function). Specific information from such reviews may include, for example, details on the exact number of piles or the exact size of structures required to support a bridge. However, in reply to this argument, there is usually adequate information from which to access the overall potential impacts of the project using preliminary data or a worst-case scenario. In addition, the final NEP delegated permit/approval actions can be used to amend or modify the original findings of the NEPA EIS process reviews but the former should not be used to re-access or re-evaluate the intent or alternatives to the project. (NEPA Professional or Association - Private Sector, Philadelphia, PA - #286.3.10500.XX)

747. Public Concern: The CEQ Task Force should clarify delegation review procedures to require federal agencies to include a section regarding NEPA compliance and cooperation in cases of multiple actions.

Defining NEPA Requirements under Delegated Federal Programs

Background

In an effort to help streamline government programs and reduce duplication of efforts, many Federal Agencies/Departments are “Delegating” review and approval authorities to state or tribal resource agencies. Such delegated authority is common at the US Army Corps of Engineers, US Environmental Protection Agency, US Department of Agriculture and US Department of Commerce. Program Delegation is normally accomplished via a formal Delegation Agreement and subsequently implemented at the state or tribal level through complex Standard Operating Procedures (SOPs) that have been approved by the Federal Agency. In most delegation agreements . . . the resulting SOPs are very program specific and singular in purpose and perspective.

Although NEPA recognizes and encourages cooperation and streamlining between the various Federal Agencies, the need for similar actions at the delegated program level is unclear. As a result when both a delegated state/tribal action and a federal action are required there is no mechanism for establishing lead or cooperating status with the non-federal office. In many cases, this results in a duplication of reporting, public notice and legal reviews.

For Example:

“Under a delegated Section 401 program a state office conducts a NEPA level project review, issues a public notice, may hold a public hearing and then issues a Record of Decision in the form of a permit, letter of authorization, etc. following Standard Operating Procedures approved by USEPA. In many cases, Section 401 Program certifications are associated with a US Army Corps of Engineers permit action that may have been delegated to a totally independent third party. The Army Corps or its delegated partner are conducting their own NEPA level reviews, issuing public notices, holding public hearings, etc. in accordance with Standard Operating Procedures approved by the Corps of Engineers. That is two NEPA level reviews taking place on the same project.”

The potential duplication of effort and lack of coordination is evident. There are cases where one federal level approval is granted with one set of conditions and another federal level approval being granted with contradictory conditions.

Recommendations.

NEPA should be clarified and sections added to require Federal Agencies to include a section regarding NEPA compliance, cooperation in cases of multiple actions, and streamlining in all state/tribal Delegation Agreements. Federal Agencies should also be required to make certain that Delegation Agreements and SOPs adequately cover multiple level reviews and that they require state/tribal offices to eliminate duplication of NEPA determination that have already been made by another delegated program and/or Federal agency.

For example:

“If one delegated office has already made a NEPA determination on a project and that project requires a permit from another delegated department and/or Federal agency approval, then the subsequent agency/office should honor the original NEPA determination, and not start a new or independent NEPA review process.”

By requiring Delegation Agreements and SOPs to formally address multiple level reviews and honoring previously made NEPA determinations, it may be possible to reduce project schedule by several months and even years.

There are many ways of improving the NEPA Review Process without decreasing the importance and value of sound environmental planning. Implementing the above recommendation would help to expedite and simplify NEPA reviews. It is important to note that NEPA reviews are not limited to Federal or Federal EIS projects. NEPA affects almost every level and degree of development taking place in America and it extends all the way down to local level NEPA-delegated permits and approvals. (NEPA Professional or Association - Private Sector, Philadelphia, PA - #373.3.30500.XX)

748. Public Concern: The CEQ Task Force should amend delegation agreements to coordinate all reviews at the funding agency NEPA EIS level with only one set of public hearings and reviews on a project.**Multiple NEPA Reviews and Duplications of Notices/Hearings/public Participation**

Complicating the delegation agreement issue is the fact that major projects need multiple NEPA actions. One NEPA review for funding, another NEPA delegated review for wetland and water obstruction issues, another NEPA delegated review for NPDES Stormwater Discharge Permit for Construction Activities, another NEPA delegated review of erosion and sedimentation controls, and yet another NEPA review for Section 106 Cultural Resources reviews. There may also be a federal Army Corps of Engineers permit action that will require yet another NEPA review. During each of these reviews the delegated state agency, via the operating language in the respective Delegations Agreements, requires a public notice, public hearing and final permit actions.

Despite extensive environmental reviews, various local/state/federal approvals, and public participation during the funding program level review (NEPA EIS federal action), the same project must then undergo individual delegated NEPA reviews to obtain wetland, water obstruction, soil erosion, NPDES permit and Section 106 approvals. Each delegated agency conducts its own isolated review, issues its own isolated public notice of pending federal action, and holds its own separate public Hearing. All of this is done on a project that has already undergone the NEPA EIS funding review. In Each case, project alternatives must be presented, evaluated and impacts determined. Major projects, such as energy generating facilities, must undergo five or six levels of NEPA reviews or potential federal actions creating a tremendous duplication of effort by the entity seeking approvals. Not to mention, the increased level of staffing required at reviewing agencies and the time demands imposed on scarce agency resources.

A secondary result of the duplicative NEPA review process is that when a funding agency completes its NEPA EIS review and decides to fund a controversial project, that same project will then encounter multiple level legal objections at Each step of the five to six subsequent permitting/approval processes as the project moves from one program level review to another. The same objections raised during the funding program NEPA EIS review are raised again to prevent wetland permit approval, NPDES Permit approval, Section 106 approval and Army Corps approval.

Recommendations

Delegation Agreements should be amended to reflect the goal of simplifying the NEPA review process where multiple level federal and/or state actions/approvals/permits are required. All reviews should be coordinated at the funding agency NEPA EIS level and there should be only one set of public hearings and reviews on a project.

Objections to this proposal may be expressed by the funding agencies because it will force them to coordinate projects better. These objections are offset by the savings resulting from removal of duplicative efforts and elimination of project delays. Scarce agency resources could thus be much better and more efficiently employed. (NEPA Professional or Association - Private Sector, Philadelphia, PA - #286.4.10500.XX)

Cooperating Agency Relationships

749. Public Concern: The CEQ Task Force should encourage agencies to extend cooperating agency status to state, local, and tribal governments.

EPA welcomes CEQ's guidance on contacting State, local and tribal entities to be cooperating agencies. A stronger outreach effort by CEQ and Federal agencies at the HQ level could result in more effective participation by State, local, and tribal entities as non-Federal cooperating agencies. (United States Environmental Protection Agency, No Address - #299.27.30200.B2)

State and local governments should be given more involvement in the NEPA process. In the Western United States, the federal government owns much of the land, including 87 percent of the entire state of Nevada. State and local governments have large stakes in federal activities occurring within their

jurisdictions. Decisions made as a result of those analyses have significant impacts on these governments and the local population. State and local governments are often the best representatives of the social and economic fabric of the community. State and local governments will also often be called upon to enforce federal actions resulting from the process. While NEPA allows state and local governments to comment on NEPA analyses before going out for public comment, those entities have not generally been given the opportunity to participate fully in the NEPA process.

We believe the quality of NEPA analyses will greatly improve if state and local governments are provided more participation in the process. The law allows for “cooperating agency” status, whereby agencies participate as full partners in the process. State and local governments should automatically be provided the opportunity to participate as “cooperating agencies” for any NEPA analysis conducted within their jurisdictions. (Business, Washington, DC - #403.15.30500.XX)

Counties, particularly those in rural areas, simply do not have the resources to become a joint-lead or cooperating agency. However, our ability to assist the Interior Columbia Basin Ecosystem Management Project is instructive. Working through four state associations of counties, counties in the Basin were represented at the table from the beginning of the process, discussing each phase and providing expertise where appropriate. Federal project managers will confirm that county participation resulting in a better product - better written and understood, with the genuine issues clarified. With federal commitment to provide resources to counties where needed, counties can continue to be productive and effective partners as joint-lead or cooperating agencies. (Association of Oregon Counties, Salem, OR - #456.7.30100.B1)

Federal and Intergovernmental collaboration:

The counties need to have a seat at the table as a cooperating agency. Currently, we are kept somewhat informed as to what is going on but we have no opportunity to have input at the analysis level. We have more at stake than being an “informed public” after the effects have been analyzed. Having an opportunity to participate in the analysis gathering process may not change the outcome for the people we represent, but at least we would have a better understanding of the whys.

We recognize the need for everyone to have the opportunity for input into the process as a part of the purpose of NEPA. It does grate pretty hard when some one who has never been anywhere close to the situation has as much voice as those who live and work here. It is our livelihood that is being decided upon, for them, it is a 37-cent stamp and a “feel good” feeling that they had a say—right or wrong. If the county could have cooperating agency status especially as it deals with Environmental Impact Statement and Environmental Assessment development, this feeling of helplessness would be somewhat minimized. (Lin Hintze, Chairperson, Custer County Board of Commissioners, Challis, ID - #104.2.7.10420.XX)

Indian Tribes should be given a greater role in the NEPA process.

The Task Force should include representation from the Native American community. Indian tribes work closely with the NEPA process when attempting to protect areas that have religious and cultural significance to the tribes. These sacred areas are often on federal lands, and are threatened by a variety of proposed activities resulting from both private entities and federal management decisions. Federal agencies often do not adequately recognize the sovereign status of Tribal nations. Under NEPA, Tribes are often treated as analogous to non-governmental organizations, rather than as governmental stakeholders. NEPA procedures should require proactive efforts to identify Indian tribes with interests in a particular project, and tribes should be included early in the decision making process as cooperating parties, similar to the status that state and local governments currently enjoy under NEPA regulations. (Preservation/Conservation Organization, Washington, DC - #549.2.10600.XX)

BECAUSE STATE, LOCAL, AND TRIBAL GOVERNMENTS BEST UNDERSTAND LOCAL ISSUES

We have seen Council on Environmental Quality’s memorandum on the topic [of cooperating agency participation] (January 30, 2002) and strongly support using a joint-agency/cooperating agency process. Pursuant to the Council on Environmental Quality’s regulations, state and local governments may be

granted joint-lead or cooperating agency status when the state or local government has “special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major Federal action significantly affecting the quality of the human environment”. 40 Code of Federal Regulation 1508.5. Obviously, state, tribal and local governments possess special expertise relating to the analysis of federal proposals on the physical environment, customs, culture, and local tax-base. (Timber or Wood Products Industry, Portland, OR - #454.19.30000.B2)

One goal of NEPA is to obtain public involvement. We suggest that “cooperating agency status” be granted to local governments such as county commissions. There is a great deal of interest in having more local say in the process and we encourage development of this idea.

Inclusion of the County government would provide a way for local input in the beginning of an action rather than at the end. Local history and local understanding of resources is one of the most valuable assets this country has and the NEPA process should take advantage of it. (Domestic Livestock Industry, La Grande, OR - #496.16,20.30000.XX)

BECAUSE THEY HAVE LARGE STAKES IN FEDERAL ACTIVITIES IN THEIR JURISDICTION

State and local governments should be given more involvement in the NEPA process, in the Western United States; the federal government owns much of the land, including 87 percent of the entire state of Nevada. State and local governments have large stakes in federal activities occurring within their jurisdictions. Decisions made as a result of those analyses have significant impacts on these governments and the local population. State and local governments are often the best representatives of the social and economic fabric of the community. State and local governments will also often be called upon to enforce federal actions resulting from the process. While NEPA allows state and local governments to comment on NEPA analyses before going out for public comment, those entities have not generally been given the opportunity to participate fully in the NEPA process. (Agriculture Industry, Bozeman, MT - #451.16.30000.XX)

Decisions made as a result of NEPA analyses have significant impacts at the local level—both on local government and on the local population. This is particularly in Idaho and other western states where the federal government owns such a high percentage of the land. State and local governments are often the best representatives of the social and economic fabric of the community. State and local governments should be given the opportunity to participate more fully in the NEPA process. They should be provided the opportunity to participate as “cooperating agencies” for any NEPA analyses conducted within their jurisdiction. (Domestic Livestock Industry, Boise, ID - #576.2.30100.XX)

BECAUSE MANY LOCAL GOVERNMENTS ALREADY HAVE COMMITTEES IN PLACE TO WORK WITH FEDERAL AGENCIES

It would be ideal to have the federal agencies consult with the state, tribes and the local governments when developing EISs and Environmental Assessments for a particular area.

It is hard to imagine from the Washington D.C. perspective, but many local governments already have the mechanism to work effectively with local agency representatives. For example, Hidalgo County, New Mexico, already has in place the Public Land Advisory Committee. The committee was formed to advise the county on public land issues.

The local federal agencies could work through these committees, with the county as joint-lead, to develop and implement programs that would enhance the lands, wildlife, endangered species, as well as, involve the local community. (Individual, Animas, NM - #435.1.30100.B1)

BECAUSE IT WILL IMPROVE THE QUALITY OF NEPA ANALYSIS

We believe the quality of NEPA analyses will greatly improve if state and local governments are provided more participation in the process. The law allows for “cooperating agency” status, whereby agencies participate as full partners in the process. State and local governments should automatically be provided the opportunity to participate as “cooperating agencies” for any NEPA analysis conducted within their jurisdictions. (Agriculture Industry, Bozeman, MT - #451.16.30000.XX)

We highly recommend that the Task Force focus some of its efforts on products that explicitly reflect the reality that all decisionmaking is not vested in Federal agencies. We suggest that the Task Force identify opportunities to better integrate the Federal decisionmaking process with State, local, tribal, and private decisionmakers. We find that lack of clarity in this area imposes an unreasonably heavy burden on the NEPA process and invites a wide variety of responses from the courts. In our program, this is most manifested in the assessment of indirect and cumulative effects largely resulting from local land use decisions and in debates concerning responsibility for mitigating the adverse environmental consequences of these effects. (Federal Highway Administration, Washington, DC - #658.3.30000.XX)

Governors have long valued the opportunity for their state agencies to participate in NEPA processes with cooperating or joint-lead status. They were pleased that the Council on Environmental Quality decided, through its January 30, 2002 memorandum, to emphasize to federal agencies the need to make cooperating agency status available. As you know, there are tremendous benefits to the NEPA process and to intergovernmental relations in allowing state agencies to share in the NEPA analysis through cooperating agency status. (Western Governors' Association, Denver, CO - #588.2.30000.XX)

750. Public Concern: The CEQ Task Force should require agencies to explain why a county should not be granted cooperating agency status.

The burden should be on the agency to show why a county should not be granted cooperating agency status and a refusal should be a decision that can be appealed. (Willy Hagge, Supervisor, Modoc County Board of Supervisors, No Address - #636.8.30100.XX)

751. Public Concern: The CEQ Task Force should encourage cooperating agencies to be knowledgeable about other agencies and their processes.

The concept of cooperating agency status appears to mean things to those involved in these interagency relationships. Our experience has shown that there is a great deal to be gained from collaboration and information-sharing in general technical areas as well as in NEPA related activities. Generally being knowledgeable and informed of just how agencies approach problems and issues helps greatly when NEPA issues arise. In addition, personal knowledge of ones counterparts in the other agency assists when cooperating on interagency projects. This way of approaching joint projects helps to eliminate the barriers to harmonious interagency relations and a truly cooperating agency. (Utah Department of Natural Resources, Salt Lake City, UT - #526.5.30100.XX)

Lead Agencies and Joint-Lead Relationships

Lead Agencies

752. Public Concern: The CEQ Task Force should define the roles of the lead agency.

Lead Agency Responsibilities: The CEQ should take steps to better define the roles of the lead agency. For example, American Council of Engineering Companies maintains that the United States Department of Transportation must play a stronger lead agency role in advancing process improvements and in advocating responsible transportation projects. This can be achieved by clarifying Department of Transportation responsibilities in defining the purpose and need for transportation projects, in determining the legitimate range of transportation alternatives to be considered, in approving transportation related technical methodologies, in establishing and enforcing reasonable project schedules, including review and comment periods, and in orchestrating the involvement of appropriate agencies. (Business, Washington, DC - #470.7.10310.XX)

753. Public Concern: The CEQ Task Force should require lead agencies to follow all pertinent regulations, policies, procedures, and directives.

For decades, the promoters of A-LP [Animas-LaPlata project] have systematically perpetrated fraud and induced an irrational paranoia in the hearts of senior water rights holders and citizens within the San Juan Basin communities. In the A-LP EIS documentation the BOR (Bureau of Reclamation)/Ute co-leaders have claimed that A-LP must be built or the Utes will go to court and be awarded water from present users and uses based on their purportedly superior 1868 water entitlements. This assertion, which forms the only remaining basis for constructing the A-LP, flies in the face of two U.S. Supreme Court rulings, one as recent as 1999, in which the court denied Ute claims of an 1868 Reservation date. By refusing to take a sober look at the legal merit of Ute claims in question lack legitimacy, and there is no sound basis for the quantities of water allocated to the tribes in the A-LP. An entire section in the analysis of the No Action Alternative should have been devoted to court case rulings and theory related to Ute reservation history and an analysis of tribal reserved water rights claims as advanced in the first Ute Settlement Agreement and as renegotiated under cover.

Among the other policies and procedures ignored by the BOR/Ute co-leadership in the development of the A-LP EIS are the Department of the Interior's Indian Water Rights Settlement Policy and the Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies. Lead agencies are required by the NEPA to follow all pertinent regulations, policies, procedures and directives, but in the case of the A-LP EIS, they ignored long-standing policy; opting, rather for subterfuge and deceit. (Individual, Farmington, NM - #91.9.10520.XX)

754. Public Concern: The CEQ Task Force should require agreement on which agency will act as the lead reviewer for non-EIS projects requiring multiple level reviews.

For non-EIS projects requiring multiple level reviews, an agreement should be made on which agency will act as the "lead reviewer". In some cases this may be the Corps of Engineers and other times a state delegated agency/department. (NEPA Professional or Association - Private Sector, Philadelphia, PA - #286.4.10500.XX)

755. Public Concern: The CEQ Task Force should require the agency with direct stewardship and expertise regarding the affected resource to assume lead agency status.

The National Park Conservation Association believes that it is imperative that the federal agency with the most direct stewardship over and expertise regarding the affected resource take the lead in situations that require cooperating agencies. For example, although the Federal Aviation Administration has jurisdiction over the skies, the National Park Service is in the best position to determine the impact of air tour over-flights on park resources—the affected environment. It would be most appropriate, therefore, for the Park Service to be the lead agency in an action that involved air tours over national parks. (Preservation/Conservation Organization, Washington, DC - #539.11.30500.XX)

756. Public Concern: The CEQ Task Force should not delegate lead agency responsibility to a state agency.

Delegation of lead agency responsibility to a state agency should be avoided whenever possible, with authority retained by the federal oversight agency instead. Ohio's Department of Transportation has made an ongoing enterprise of circumventing NEPA requirements. (Individual, Toledo, OH - #516.11.10310.XX)

757. Public Concern: The CEQ Task Force should recognize one lead agency as the single lead agency for decisionmaking.

Minimized role of lead federal agency: It appears that the Federal Highway Administration (FHWA) has surrendered the leadership role to other "partners" such as the Environmental Protection Agency and the U.S. Army Corps of Engineers. Often the strongest personality on the federal team, regardless of

expertise becomes the dominant participant. Environmental regulatory agencies are allowed excessive latitude in the development and review of project-specific traffic, engineering, and other technical fields outside their area of expertise. FHWA acknowledges it is no longer a project proponent, but an equal “partner” in the environmental decision process. The lead federal agency must be recognized as the single lead agency for decisionmaking. (Virginia Department of Transportation, No Address - #203.2.10300.XX)

Multiple environmental approvals: As a result of the convoluted maze of federal regulation developed to implement NEPA, numerous federal environmental approvals are required. The federal government does not speak with one unified voice, but comes across as fragmented with numerous conflicting agendas and objectives. Environmental documents are sent to 13 separate federal agencies for review, comment, and/or approval. The lead federal agency should have the authority to speak as the sole federal voice on federal projects. A single public interest finding is critical for efficient and effective decisions. (Virginia Department of Transportation, No Address - #203.2.10300.XX)

758. Public Concern: The CEQ Task Force should not recognize one lead agency as the single lead agency for decisionmaking.

BECAUSE IT REMOVES AUTHORITY FROM OTHER AGENCIES THAT HAVE EXPERTISE

Examples of the type of “streamlining” proposals that the Environmental Law and Policy Center and CNT oppose because they would weaken the NEPA process and do little to actually improve NEPA implementation include:

Consolidation in a Single Agency: Most projects subject to NEPA will have to be reviewed by a number of different federal and state agencies. Streamlining advocates propose consolidating environmental review authority for a particular project in a single federal agency, with other agencies reduced to the role of simply commenting on the project. Such consolidation, however, takes authority away from agencies that have expertise, and a legislative mandate for environmental protection, regarding a particular issue. Furthermore, consolidation in a single federal agency takes power away from local and state agencies that may be more responsive to local concerns. (Preservation/Conservation Organization, Chicago, IL - #87.1.10200.XX)

759. Public Concern: The CEQ Task Force should require lead agencies to determine what other agencies should be involved and classify them according to their role.

It . . . should be noted that the role of “cooperating agency,” as defined in existing Council on Environmental Quality regulations, is appropriate only for a limited sub-set of agencies—for example, those with a permitting role or “special expertise.” In practice, it is important for lead agencies to determine, early in the NEPA process, the full set of agencies that will be involved. There have been various efforts to identify those agencies and classify them according to their role. (American Association of State Highway and Transportation Officials, Washington, DC - #591.6.30100.XX)

760. Public Concern: The CEQ Task Force should encourage lead agencies to view cooperating agencies as partners.

A lead agency must consider a joint-lead or cooperating agency as a partnership, not a stakeholder relationship. The lead agency must want the partnership of the cooperating agency. The cooperating agency should have some expertise or an assigned area of responsibility, not just serve as an advisor. The cooperating agency must accept the mission of the lead agency and the purpose of the project. Without acceptance, interagency committee meetings become a forum for internal debate between what should be partners. (Placed-Based Group, Sacramento, CA - #522.11.30100.B1)

761. Public Concern: The CEQ Task Force should designate a lead agency to resolve interagency disagreement over scientific interpretation.

Scientists do not always know exactly which wildlife species will be harmed by certain oil and gas drilling activities. But they know the proper scientific methodology that should be employed to ask the question. See, e.g., *Wyoming Outdoor Council et al.*, 156 I.B.L.A. 347 (April 26, 2002) (ruling that Interior Department's environmental analyses of oil and gas leases are completely inadequate). Similarly, scientists do not always know exactly how certain fishing practices will harm non-target species. But they know the proper methodologies and models to use to make intelligent estimates. If more than one agency's official expertise is at issue, a lead agency should be clearly designated to identify (and ideally resolve) disagreements in interpretation or substance.

762. Public Concern: The CEQ Task Force should strengthen the decisionmaking authority of the lead agency.**BECAUSE SEARCHING FOR CONSENSUS STALLS THE PROCESS**

It is important to recognize that—at least for highway projects—efforts to encourage collaborative decision-making have had the consequence of eroding lead agencies' decision-making authority. The result, in some cases, has been a tendency for the NEPA process to become bogged down in a search for complete consensus. Effective decision-making certainly requires extensive coordination, but is also requires a willingness by the lead agencies in the NEPA process to take responsibility for making difficult decisions at key milestones. Therefore, in revising NEPA procedures, it is important for the Council on Environmental Quality to consider opportunities to clarify and perhaps strengthen the role of the lead agencies. (American Association of State Highway and Transportation Officials, Washington, DC - #591.5.30200.XX)

763. Public Concern: The CEQ Task Force should grant the lead agency the authority to develop the document and set deadlines for agency input and decisions.**JOINTLY OR IN PARALLEL WITH STATE PROCESSES**

Once an applicant has requested a lead agency for its project, clear authorities need to be delineated for that agency and any other agencies involved in the NEPA process. A single environmental document that can form the basis of all necessary permit decisions is a must. Coordinated deadlines for agencies' inputs and permit decisions also must be established and adhered to. EEI [Edison Electric Institute] believes that the lead agency should be given the authority and the responsibility to develop that single document and set deadlines, with the direction to do so as much as possible jointly or in parallel with state processes. If CEQ believes that such authority is currently beyond its statutory authority, it should request such authority be granted by congress. CEQ in revising any guidelines should acknowledge the unique issues affecting linear facilities and tailor a NEPA review process that addresses them. (Utility Industry, Washington, DC - #586.6.10500.XX)

764. Public Concern: The CEQ Task Force should address the inability of lead agencies to complete the NEPA process.

Multiple agencies involved in decision-making slow the process.

Although the CEQ regulations provided for a "lead" agency when multiple agencies are involved in complying with NEPA for a proposed action, the lead agency can be powerless to complete the NEPA process. For example, a record of decision can be delayed while waiting for the Fish and Wildlife Service or National Marine Fisheries Service to prepare a final biological opinion under the Endangered Species Act. (Timber or Wood Products Industry, Portland, OR - #454.47.10310.XX)

Joint-Lead Relationships

765. Public Concern: The CEQ Task Force should encourage greater use of joint-lead agency relationships.

BECAUSE JOINT-LEAD PROJECTS FACILITATE CREATION OF AN “ECONOMY OF SCALE” THAT WILL BETTER ADDRESS BROAD-LEVEL RESOURCE CONCERNS

In addition to effective cooperating agency relationships, greater use of joint-lead agency relationships could increase NEPA efficiency. Resource issues rarely follow jurisdictional boundaries. Joint-lead processes might provide a deeper “talent pool” from which to draw, while requiring fewer participants from each agency to participate in actual NEPA document generation, thereby leaving more specialists free to focus on day-to-day management activities. In short, joint-lead projects offer the ability to create an “economy of scale” that will better address broad-level resource concerns. Such projects make the most sense where regional issues can be relatively quickly addressed on a programmatic basis. Conversely, these advantages are minimized in an analysis involving extensive site-specific analysis. (Recreational Organization, Boise, ID - #90.9.30000.XX)

766. Public Concern: The CEQ Task Force should require agencies to inform property owners and local governments of the availability of a joint-lead relationship.

There should be a requirement for the agencies to brief to property owners and local government in a NEPA action area on the availability of the joint-lead relationship. A large majority of the people are not aware of this rule and the agencies do not do anything to inform the people. (Individual, Huachuca City, AZ - #372.23.30500.B1)

767. Public Concern: The CEQ Task Force should consider that the joint-lead process is not employed fairly.

The joint lead process is a joke. The agencies come in and determine who will agree with them, they then exclude all of us that may not give what they want to hear. . . . The joint process does not allow us our stand to say this will harm us and we can’t agree. (Individual, Pioche, NV - #332.1.30140.B1)

Characteristics of Effective Collaborative Relationships

Summary

This section includes the following topics: Characteristics, and Examples of Effective Collaborative Relationships.

Characteristics – Respondents list numerous characteristics of effective collaborative relationships. These characteristics fall into the categories that follow.

General Characteristics – One of the most commonly mentioned general characteristics of effective collaborative relationships is the relationship’s mutual advantageousness for all parties concerned. As one individual observes, “Both agencies must see an advantage to the relationship either through less work overall, better mission accomplishment, [or] improved relations.” Other general characteristics include strategic planning; desire to protect all resources; understanding of decision consequences for other jurisdictions; consideration of the public interest; and flexibility, creativity, and innovation.

Goals/Objectives – Characteristics having to do with goals and objectives include understanding and promotion of the big picture; recognition of each agency’s governmental mandate;

acceptance of the lead agency's mission and purpose; recognition of similar management objectives; and mutual agreement regarding strategies and objectives. Notes one federal agency, "Collaborating partners need to jointly develop a shared vision of the desired outcomes of their collective efforts and agree upon objectives and strategies to be pursued. The goals and objectives that they are working together to achieve should be clear to all partners and should be realistically obtainable."

Teamwork/Cooperation – A number of respondents identify the capacity to work as a team as an essential characteristic of effective collaborative relationships. Suggested associated characteristics include commitment to cooperate; ability to negotiate fairly and resolve differences through an agreed upon process; sharing of knowledge, accolades, and outcomes; mutual respect for each agency's needs; coordination of NEPA actions with local and regional agencies; use of working groups composed of members from each cooperating agency; incorporation of the planning efforts of other agencies; and coordination of all activities with stakeholders.

Interagency Rules/Regulations/Policies – Respondents identify a number of characteristics of effective collaborative relationships related to interagency rules, regulations, and policies. These include compliance with other rules and laws in general; understanding of federal and state processes; compliance with rules and regulations of the lands in question; use of interagency agreements and/or interagency personnel agreements; acknowledgement of different management policies; standard criteria for evaluating proposed projects; and adequate consultation with American Indian tribes.

Roles/Relationships – One especially commonly mentioned characteristic of effective collaborative relationships is that of clearly defined roles. According to one federal agency, "Effective collaborating partners negotiate ground rules to clarify and document their mutual understanding of their respective roles, responsibilities, and authorities regarding their joint effort. The roles of the lead, co-lead, and cooperating agencies and their responsibilities should be clearly articulated and communicated to staff throughout the agency." Associated characteristics include designation of a lead federal agency at project inception; designation of an appropriate federal agency staff person to be responsible for communication; opportunity for participants to develop professional, interpersonal relationships; and equality among participants.

Participation – Some respondents maintain that participation—both early and continued—is an important characteristic for collaborative relationships. One federal agency writes, "Early formal and informal input from cooperating agencies can help the lead agency assure that an EIS addresses each agency's respective concerns and needs for analyses." Another federal agency states, "Successful collaboration depends on the continuing involvement of a core group of participants, due to both the required investment in learning on the part of each participant and the development of relationships among all the participants throughout the collaborative process."

Communication – A number of respondents emphasize the importance of open communication to effective collaborative relationships. One elected official observes, "The most important characteristic of an effective joint-lead or cooperating agency relationship/process seems to be efficient, timely communication and exchange of information between the parties involved. The ease and speed of electronic communications does facilitate the process, but should not be relied upon as the only medium of communication between meetings." Suggested characteristics in this

category include information sharing, full disclosure of available scientific information, use of a communication protocol for collaboration, and feedback/response to input.

Public Involvement – Some respondents believe that public involvement is an important characteristic of effective collaborative relationships. Characteristics associated with public involvement include fair representation of all interests who have a stake in the decision, early engagement of stakeholders and sources of expertise, and interagency consultations prior to public involvement in order to facilitate meaningful public comment.

Trust – Respondents emphasize that “it is difficult to collaborate effectively when a high level of mistrust exists between agencies.” Characteristics associated with trust include honesty, lack of hidden agendas, and “a high degree of certainty that projects will come out of the planning effort.”

Personnel/Education – A number of respondents state that characteristics related to personnel and education are important to effective collaborative relationships. These characteristics relate to personnel resources, interagency personnel sharing, and personnel characteristics. Characteristics related to personnel resources include an adequately trained staff, and educated and available leadership. Those related to interagency personnel sharing include agency rotation of facilitators and note-takers, and designation of a representative from each agency. Finally, in connection to personnel characteristics, people stress the need for agency representative to be personable and to have had experience as both a team player and resource manager, as well as the need for agency personnel to work collaboratively with counterparts in other agencies.

Finally, a few respondents recommend use of a third party facilitator who can “make sure everyone knows her/his role, how the project will be credited and who will take leadership roles based on the agency executives’ agreements prior to work taking place on the ground.”

Timeframes – Several respondents remark that timely processes are essential to effective collaborative relationships. One elected official notes, “Specific timeframes for commenting and consultations between federal agencies should be established to conclude the process and provide finality, uniform timetables should also be developed for all agencies dealing with similar subject matters, including scoping, comments, review, appeals, etc. . . .” A federal agency adds, “Commitment by the lead agency to coordinate timetables and meetings that take into account other agencies’ resources, priorities, and prior commitments is also vital.” Finally, some stress that a reasonable schedule for internal document review should be agreed on at the outset.

Meetings – Some respondents mention meetings as a characteristic of effective collaboration. Recommendations includes pre-project meetings to clarify objectives, methods, terms, and requirements; regularly scheduled meetings “to stay on top of and incrementally [reach] objectives and [adjust] timelines;” and convenient meeting places for all agencies involved in collaboration efforts.

Funding – Respondents assert that adequate funding is absolute necessary for effective collaboration to take place. One elected official writes, “Local governments are at a severe disadvantage when it comes to accessing federal planning at any level. . . . [The] Council on Environmental Quality should explore what funding tools are needed to bring full participation from local government into the process.” Specific suggestions include reimbursement to state agencies for preparation of federal NEPA documents and funding for county contributions.

Technology and Information Management – Respondents suggest that technology and information management are important to effective collaborative relationships. Some suggest that use of good information technology tools such as Geographic Information Systems support effective decisionmaking. Others suggest that the Task Force should encourage a uniform policy regarding data management. One individual writes, “All . . . agencies should use a set of common data pertaining to each jurisdiction.” Likewise, another suggests that agencies should “adopt consistent, compatible and technically rigorous standards and protocols for obtaining, managing and reporting data used in NEPA analyses.”

Examples of Effective Collaborative Relationships – Respondents describe a number of examples of effective collaborative relationships. Examples include collaboration between federal agencies as well as between federal agencies and state and local governments.

Characteristics

General Characteristics

768. Public Concern: The CEQ Task Force should consider characteristics of effective collaborative relationships.

STRATEGIC PLANNING

Many counties believe county capacity for strategic planning is controlled by strategic planning on federal lands especially where federal lands include the majority of the county area. Inconsistencies in implementing federal strategic plans reduce county confidences. Counties are dependent on federal planners to estimate the effects of the federal strategic plans on the county. Because most federal strategic plans are developed with political considerations, an investment in political capital is required. Some suggestions: Promote and encourage local expertise to participate in strategic planning, apply for cooperating agency status at the commencement of projects to become part of the planning team, and develop county expertise in one or more segments of strategic planning for participation as cooperating agency. (Placed-Based Group, Sacramento, CA - #522.14.30150.B2)

PARTIES FIND THE RELATIONSHIP MUTUALLY ADVANTAGEOUS

Both agencies must see an advantage to the relationship either through less work overall, better mission accomplishment, improved relations. (Individual, Fort Collins, CO - #114.1.30100.B1)

Effective partners need to see collaboration as in their own self-interest. They should enter into a collaborative relationship willingly to accomplish results they recognize they are more likely to achieve by working together than by working alone. They need to fully recognize and firmly believe that the benefits and advantages to be gained by working together outweigh the associated costs of collaborating, such as the time and resources required, as well as any loss of autonomy or potential threats to “turf.” (United States Institute for Environmental Conflict Resolution, Tucson, AZ - #574.4.30100.B1)

[B2] Inadequate experience in how to negotiate effectively for mutual gains.

While many agencies may have staff that are effective advocates for their mission, far fewer staff have effective negotiation skills for discovering mutual gains. Yet finding opportunities where all participants can benefit is often a prerequisite for achieving implementable solutions. (United States Institute for Environmental Conflict Resolution, Tucson, AZ - #574.22.30230.B2)

One of the major benefits of NEPA is the requirement for agencies to collaborate early in the process. An effective collaboration is one where agencies see the outcome of the EIS as a benefit to both and

where agencies seek to solve problems together. (National Oceanic and Atmospheric Administration, Washington, DC - #637.19.30100.XX)

INTEREST IN PROTECTING ALL RESOURCES

[B1] They need to care about all resources in both the short and long term, not just their narrow short-term interests. Everything is integrated. Short term, narrow interest solutions can cause long-term problems. (Individual, McCall, ID - #33.1.30100.B1)

UNDERSTANDING OF DECISION CONSEQUENCES FOR OTHER JURISDICTIONS

Agencies should consider the collateral impact of their actions [on] lands and resources under the jurisdiction of other federal, state, or private entities. (Preservation/Conservation Organization, Washington, DC - #539.7.30100.XX)

CONSIDERATION OF THE PUBLIC INTEREST

A successful collaborative agreement would need to explicitly state that participating agencies must provide a balanced review, considering what is best in the public interest. For example, public access versus security, wetlands impacts versus economics etc. (Port Authority of New York and New Jersey, New York, NY - #457.5.30100.B1)

FLEXIBILITY, CREATIVITY, AND INNOVATION

What are the characteristics of an effective joint-lead or cooperating agency relationship/process? . . . The process should be approached with flexibility, creativity, and innovation in order to serve the needs identified. (United States Environmental Protection Agency, No Address - #299.26.30100.B1)

Goals/Objectives

769. Public Concern: The CEQ Task Force should consider characteristics of effective collaborative relationships.

UNDERSTANDING AND PROMOTION OF THE BIG PICTURE

[B1] There has to be an understanding and a promotion of the big picture by all involved. (Individual, McCall, ID - #33.1.30100.B1)

RECOGNITION OF EACH AGENCY'S GOVERNMENTAL MANDATE

The characteristics of an effect joint-lead or cooperating agency relationship include the recognition of each agency's governmental mandate, e.g., WisDOT's mandate is the provision of fast safe and efficient transportation. WisDOT has implemented cooperative agreements with other State and federal agencies and is currently pursuing a statewide agreement to establish the framework for project-level agreements that, it is hoped, will speed the environmental reporting and review processes. Benefits of these agreements include better inter and intra-governmental relations and increased attention to avoidance and minimizing adverse effects. The cooperative agreements state that each agency will cooperate to achieve their respective mandates without precluding one or the other. WisDOT also finances numerous positions within the Wisconsin Department of Natural Resources to help speed up their review processes. (Wisconsin Department of Transportation, Madison, WI - #214.12.30100.B1)

ACCEPTANCE OF LEAD AGENCY'S MISSION AND PURPOSE

[Effective collaboration involves] acceptance by all participants of the mission of the lead agency and the purpose of the project, appropriate assignments for all participants, and development of positive relationships before a crisis is determined. (Placed-Based Group, Sacramento, CA - #522.22.30100.B3)

SIMILAR MANAGEMENT OBJECTIVES

Both agencies must have a similar management objective. (Preservation/Conservation Organization, Eugene, OR - #106.11.30100.B1)

MUTUAL AGREEMENT REGARDING STRATEGIES AND OBJECTIVES

Collaborating partners need to jointly develop a shared vision of the desired outcomes of their collective efforts and agree upon objectives and strategies to be pursued. The goals and objectives that they are working together to achieve should be clear to all partners and should be realistically obtainable. (United States Institute for Environmental Conflict Resolution, Tucson, AZ - #574.3.30100.B1)

Teamwork/Cooperation

770. Public Concern: The CEQ Task Force should consider characteristics of effective collaborative relationships.

TEAMWORK

I applaud the cooperating agency idea, and plan to see more agencies working together toward our goals, rather than constantly undermining each other's work and authority to the detriment of the very item they are trying to enhance. Teamwork seems to be a lost art in government circles. (Individual, Challis, ID - #287.2.30140.XX)

Consider greater use of teams and team-building to allow the individuals to more effectively work together. (Individual, Las Vegas, NV - #359.10.30100.XX)

An effective joint-lead effort involving more than one agency depends foremost on close cooperation between all responsible parties from the very beginning of the "process", in the conceptual phase well before any actual planning is underway. This requires that the individual agencies must set aside their own particular agendas as much as possible and appropriate and therefore focus their efforts on the proposed joint project. In essence, this means that a "core team" of managers is assembled from the participating agencies to serve as "lead" managers during the NEPA process. These individuals should be delegated the authority to make key decisions at particular points during the process without necessarily having to go to higher authorities for approval of actions. The core team works closely together to come to a consensus regarding particular action items. (Individual, Alexandria, VA - #650.2.30100.XX)

COMMITMENT TO COOPERATE

[B1] Response: This requires: Agreement by all the agencies involved that they will cooperate. (Government Employee/Union, Grangeville, ID - #44.9.30100.B1)

CONSENSUS REGARDING THE PROCESS TO RESOLVE ISSUES

Collaborations should include a mutual understanding of the scope of the proposed action and approach, the ability to directly and openly share information, and the capability to resolve issues or risks to meet the objectives of the project. The process for resolving issues should be agreed upon before any issues arise. The cooperating agencies should identify the best overall resolution of issues. Those resolutions should always be based on factual and scientific data that would stand up to subject matter expert review. (United States Navy, Washington, DC - #568.10.30140.B1)

FAIR AND EQUITABLE NEGOTIATION FORUM

Collaborative success is dependent upon the formation of a fair and equitable negotiation forum. Early integration with the planning agency can foster feelings of fairness and equality, as can a foundation of science. Due in part to poor past experiences, agencies are often reluctant to expend significant resources to engage community participation. Significant financial support is required for facilities, facilitators, and participants. Collaborative groups generally produce emotional responses that require translation into science-based analyses. Suggestions: Develop a blueprint for collaborative forums, develop financial support for collaborative forums, develop a translation mechanism to incorporate collaborative results, and consider county lead in collaborative forums. (Placed-Based Group, Sacramento, CA - #522.15.30100.B2)

OPPORTUNITY FOR CO-CREATION AND JOINT PROBLEM SOLVING

What are the characteristics of an effective joint-lead or cooperating agency relationship/process? . . . The process should promote co-creation and joint problem solving. It should focus on opportunities, alternatives, and solutions, rather than on problems and obstacles. (United States Environmental Protection Agency, No Address - #299.26.30100.B1)

AGREEMENT FROM ALL PARTIES

The working group efforts should be from a unanimous front in order to ensure that any position has been fully debated. As long as the working group, cooperating agencies, and the federal agency participate in partnership, openness and honesty, few surprise decisions with their resulting ramifications will occur. (Domestic Livestock Industry, Washington, DC - #630.12.30100.B1)

We have learned that agreement among the parties at the front end of the process on such matters as general principles and philosophy governing the breadth of the analysis, quality assurance requirements for acceptance of scientific and technical data, and mechanisms for stakeholder involvement are critical to the success of the activity. (Western Governors' Association, Denver, CO - #588.4.30100.XX)

SHARING OF KNOWLEDGE, ACCOLADES, AND OUTCOMES

Question: B1 Response: As exemplified in recent joint ventures with the BLM and USFS, they have succeeded quite effectively based on . . . Sharing the wealth of knowledge, accolades and outcomes from joint-venture projects. Working together, agencies with similar missions can enhance their own abilities and knowledge base, thereby improving the overall NEPA process. Therefore, best practices should call for more joint ventures and collaborative work. (Individual, Washington, DC - #54.1.30100.B1)

MUTUAL RESPECT FOR EACH AGENCY'S NEEDS

What are the characteristics of an effective joint-lead or cooperating agency relationship/process? . . . The process should advocate and support mutual respect for each agency's needs. This should be based upon a mutual understanding of each agency's goals, responsibilities, limitations, and constraints. (United States Environmental Protection Agency, No Address - #299.26.30100.B1)

Effective collaboration partners need to share an understanding and mutual respect for the other agencies involved, including how they operate, their cultural norms and values, their missions, their roles, their regulatory requirements, and their constraints. The mutual respect must extend to the personal working relationship among the individuals who are representing their agencies in a collaborative process.

Collaborating partners must feel "ownership" of both the way they work together and the outcome of their efforts. Partners need to jointly design and agree on the processes and procedures they will follow. They also must see that the eventual outcome is likely to meet at least some of their important needs and interests. (United States Institute for Environmental Conflict Resolution, Tucson, AZ - #574.1,5.30100.B1)

A characteristic of an effective relationship/process is mutual understanding of and respect for the differing missions of the various agencies. (Federal Aviation Administration, No Address - #534.12.30100.B1)

Chief among the requirements for an effective joint-lead or cooperative agency process is . . . flexibility in adapting analytical approaches and interactions with the public, external agencies, and other stakeholders to accommodate the regulatory requirements and styles of each participating agency. (Individual, Fort Polk, LA - #654.1.30100.B1)

COORDINATION OF NEPA ACTIONS WITH LOCAL AND REGIONAL AGENCIES

Eglin Air Force Base tries to coordinate NEPA documents through various State Clearinghouses. This is typically done as part of the Federal Consistency Determination pursuant to the Coastal Zone Management Act. Unfortunately, downsizing of staff has had an impact on this type of review. The real void is a lack of engaging with regional and local governments within a "region of influence" other than

as members of the public. Other than normal public notice published in local print media, limited effort is made to coordinate with regional planning councils and counties, which have oversight responsibility for development within a region. If resources were available, it would help to coordinate NEPA actions directly with local (city and county) and regional agencies. It would also be helpful if these agencies coordinated their plans and proposed actions directly with federal facilities that might be affected. (United States Air Force, Washington, DC - #525.13.30110.B1)

USE OF WORKING GROUPS COMPOSED OF MEMBERS FROM EACH COOPERATING AGENCY

At the outset, the federal agency should establish a working group consisting of members from each entity granted cooperating agency status. (Domestic Livestock Industry, Washington, DC - #630.12.30100.B1)

INCORPORATION OF THE PLANNING EFFORTS OF OTHER AGENCIES

Agency personnel should be reminded to incorporate the planning efforts of other agencies (state or federal) into their NEPA activities. For instance, when a land management agency is conducting a NEPA analysis on habitat that impacts songbirds, the agency should retrieve information from the physiographic regional plans for Partners in Flight because those plans provide excellent guidance on the habitat needs of songbirds. (Recreational/Conservation Organization, Washington, DC - #89.19.30300.B3)

[The] Council on Environmental Quality should make it very clear that the agencies must honor and work with existing resource plans at the state and local level. (Willy Hagge, Supervisor, Modoc County Board of Supervisors, No Address - #636.8.30100.XX)

COORDINATION OF ALL ACTIVITIES WITH STAKEHOLDERS

Important aspects of an effective joint-lead or cooperating agency relationship/process include the ability coordinate all activities with all stakeholders (project sponsor, multiple agencies and the public), and foster expeditious communication between stakeholders. (Individual, Denver, CO - #617.1.30100.B1)

Interagency Rules/Regulations/Policies

771. Public Concern: The CEQ Task Force should consider characteristics of effective collaborative relationships.

COMPLIANCE WITH OTHER RULES AND LAWS

A factor to consider is the interaction between NEPA and related statutory requirements—e.g., Section 404 of the Clean Water Act, Section 106 of the National Historic Preservation Act, Section 7 of the Endangered Species act, and (in the case of transportation projects) Section 4(f) of the Department of Transportation Act. The NEPA process should serve as an “umbrella” under which all agencies consider competing concerns and arrive at a single decision that serves the overall public interest. Yet in many cases, decisions made in the NEPA process are driven by the mandates of specific permitting requirements. The tension between NEPA and these other laws underlies much of the tension between NEPA lead agencies (e.g., Federal Highway Administration) and the agencies responsible for specific permitting requirements. It is critical for this underlying tension to be taken into account when seeking ways to improve inter-agency collaboration in the NEPA process. (American Association of State Highway and Transportation Officials, Washington, DC - #591.6.30100.XX)

UNDERSTANDING OF FEDERAL AND STATE PROCESSES

The important purposes of NEPA are best achieved when the environmental analysis and public disclosure requirements of this landmark law are applied only to those federal decisions truly in need of further environmental analysis in a process emphasizing timely interagency collaboration. This collaboration must be accomplished with full knowledge of how the federal and state governmental agencies function and with the goal of avoiding unnecessary impact evaluation, documentation and public input processes. (Other, Washington, DC - #506.26.10430.XX)

COMPLIANCE WITH RULES AND REGULATIONS OF THE LANDS IN QUESTION

Federal and state agencies could effectively “co-lead” program or project efforts if each is allowed to operate by the rules and regulations of the lands in question. If the issue is state lands, with potential impact to federal lands, then state land rules should be followed regardless of the funding source. (Idaho Department of Lands, Coeur d’Alene, ID - #46.5.30210.B2)

USE OF INTERAGENCY AGREEMENTS AND/OR INTERAGENCY PERSONNEL AGREEMENTS

What are the characteristics of an effective joint-lead or cooperating agency relationship/process? . . . The process should take advantage of Interagency Agreements (IAGs) and/or Interagency Personnel Agreements (IPAs) to facilitate adequate participation of participating agencies—as advocated by TEA-21. This improves efficiency and effectiveness of the NEPA process through a cooperative process. (United States Environmental Protection Agency, No Address - #299.26.30100.B1)

ACKNOWLEDGEMENT OF DIFFERENT MANAGEMENT POLICIES

Watershed-level projects such as hazardous fuel reduction treatments demonstrate how regulatory differences may impact restorative treatments across the landscape. In these situations, where both public and private lands are involved, land managers need to remain respectful and cognizant of the regulatory requirements of the different landowners. Private landowners, who are typically required to manage according to best management practices required by the State, can proceed from a proposed management action to implementation relatively quickly. (Other, Washington, DC - #587.13.30200.B1)

STANDARD CRITERIA FOR EVALUATING PROPOSED PROJECTS

All . . . agencies should be required to use the same criteria when evaluating a proposed project. For example, different agencies use different criteria for determining when impacts are significant. These criteria should be standardized amongst the federal and state agencies and the regional or field offices within those agencies. (Oil, Natural Gas, or Coal Industry, No Address - #634.3.30100.B1)

ADEQUATE CONSULTATION WITH AMERICAN INDIAN TRIBES

The Forest County Potawatomi Community has concerns regarding study area B, Federal and Inter-governmental Collaboration, concerning federal agencies’ obligations to consult with Indian tribes under the federal trust responsibility. The federal trust responsibility imposes judiciary obligations on the United States to protect the rights, resources and interests of Indian tribes. As is particularly relevant here, the federal trust responsibility imposes legal obligations on the United States to consult with Indian tribes on all proposed federal actions that may affect tribes’ interests in a manner that ensures federal consideration of tribes’ concerns and objections with regard to such actions. As such, any collaboration in developing environmental analysis or participation in the NEPA process must include adequate consultation with Indian tribes independent of any joint-lead or cooperating agency status.

In brief, the federal trust responsibility is a separate legal doctrine, which exists independent of and in addition to specific legal obligations imposed by treaty, statutes, regulations and Executive Orders. See *Kagama v. United States*, 118 U.S. 375, 383-84 (1886) (relying on the government’s fiduciary relationship to the Indians, Supreme Court sustained the constitutionality of the Major Crimes Act, 23 Stat. 385 (1885), 18 United States Code. 1153, holding that “these Indian tribes are the wards of the nation. They are communities dependent on the United States. From their very weakness and helplessness there arises the duty of protection and with it the power”); *Pyramid Lake Paiute Tribe v Morton* 354 F. Supp. 252, 256 (D.D.C. 1972) (where no specific statute or treaty was violated, court found that agency officials had violated the trust responsibility). Thus, these obligations function as independent restraints on all federal actions that may affect Indian tribes. The trust responsibility includes the duty to consult with tribes and Indians to ensure their understanding of federal actions that may affect their rights and to ensure federal consideration of their concerns and obligations with regard to such actions. As the Court explained in *Klamath Tribes v United States Forest Service*, 1996 WL 924509 (D Or. 1996), “In practical terms, a procedural duty has arisen from the trust responsibility such that the federal government must consult with an Indian Tribe in the decisionmaking process to avoid adverse effects on treaty resources.”

Thus, the federal trust responsibility imposes a legal obligation to consult with Indian tribes on all proposed federal actions that may affect tribes' interests independent of any joint-lead and cooperating agency status. (Forest County Potawatomi Community, Milwaukee, WI - #479.4-6.30000.XX)

Roles/Relationships

772. Public Concern: The CEQ Task Force should consider characteristics of effective collaborative relationships.

CLEARLY DEFINED ROLES

Provide greater explanation at the time of scoping and in the preparation of the NEPA documents the responsibilities and expectations for the cooperating agencies. (Individual, Las Vegas, NV - #359.10.30100.XX)

[B1] Response: This requires clear and unambiguous roles (who will do what, when). (Government Employee/Union, Grangeville, ID - #44.10.30100.B1)

An effective joint or cooperating agency relationship or process can be characterized as one through which each agency has a clear understanding . . . [of] roles and responsibilities of the lead agency and each cooperating or joint agency. (Surface Transportation Board, No Address - #519.15.30100.B1)

The convener of a process must describe or reach agreement with all parties on what their role will be and how much influence they will be given in the process. Western Governors' Association strives for consensus across parties in its projects, sometimes setting up a last resort voting process and other times limiting outcomes to fully agreed upon recommendations. (Western Governors' Association, Denver, CO - #588.6.30100.XX)

Effective collaborating partners negotiate ground rules to clarify and document their mutual understanding of their respective roles, responsibilities, and authorities regarding their joint effort. The roles of the lead, co-lead, and cooperating agencies and their responsibilities should be clearly articulated and communicated to staff throughout the agency. (United States Institute for Environmental Conflict Resolution, Tucson, AZ - #574.11.30130.B1)

DESIGNATION OF A LEAD FEDERAL AGENCY AT PROJECT INCEPTION

We suggest a "lead" federal agency be designated at project inception to coordinate environmental review and permitting . . . (Utility Industry, Duluth, MN - #108.1.30100.XX)

DESIGNATION OF AN APPROPRIATE FEDERAL AGENCY STAFF PERSON TO BE RESPONSIBLE FOR COMMUNICATION

The most important characteristics of [collaborative] processes include . . . designation of an appropriate federal agency staff person to be responsible for . . . communication. (Recreational/Conservation Organization, Washington, DC - #89.14.30100.B1)

OPPORTUNITY FOR PARTICIPANTS TO DEVELOP PROFESSIONAL, INTERPERSONAL RELATIONSHIPS

What are the characteristics of an effective joint-lead or cooperating agency relationship/process? . . . The process should allow participants to develop professional, interpersonal relationships in order to establish acceptance in joint decision-making. (United States Environmental Protection Agency, No Address - #299.26.30100.B1)

EQUALITY AMONG PARTICIPANTS

The characteristics of an effective joint-lead or cooperating agency relationship/process are equality among participants . . . (NEPA Professional or Association - Private Sector, Tucson, AZ - #82.11.30100.A1)

Participation

773. Public Concern: The CEQ Task Force should consider characteristics of effective collaborative relationships.

PARTICIPATION EARLY IN THE PROCESS

[One] of the characteristics of effective joint-lead and cooperating agency relationships/processes are early involvement in the process. . . . Early formal and informal input from cooperating agencies can help the lead agency assure that an EIS addresses each agency's respective concerns and needs for analyses. Early identification of key issues to resolve facilitates timely EIS review. (Federal Aviation Administration, No Address - #534.11.30100.B1)

This process could be improved by ensuring that all interested agencies are brought into the process at the beginning and are required to clearly define their interests. This is particularly true for the Environmental Protection Agency (EPA), who has a statutory responsibility to review NEPA documents. While we realize that Environmental Protection Agency and some other federal agencies view their roles as being evaluators, and not as participants, this view often results in unwarranted delays in completion of an analysis, because these non-lead agencies do not provide their views until the process is virtually completed. The cooperating agency role should be redefined to require the agency to provide its input much earlier in the process or to formally defer their responsibility to the lead agency. (Oil, Natural Gas, or Coal Industry, No Address - #634.3.30100.B1)

CONTINUED PARTICIPATION THROUGHOUT THE PROCESS

Successful collaboration depends on the continuing involvement of a core group of participants, due to both the required investment in learning on the part of each participant and the development of relationships among all the participants throughout the collaborative process. Furthermore, the motivation and incentives for engaging productively in interagency collaborative efforts are increased when partners anticipate the need for continued cooperation into the future to fully implement a decision designed to accomplish their shared objectives. Establishing mutual expectations to jointly monitor the impacts of a decision and to consult with each other regarding the need to modify management actions enhances the level of commitment to collaborative processes. Agencies see they have a shared stake in the successful implementation of their collaborative decisionmaking process. (United States Institute for Environmental Conflict Resolution, Tucson, AZ - #574.9.30100.B1)

Communication

774. Public Concern: The CEQ Task Force should consider characteristics of effective collaborative relationships.

OPEN COMMUNICATION THROUGHOUT THE PROCESS

The most important characteristics of [collaborative] processes include . . . ongoing open communication throughout the process. . . . (Recreational/Conservation Organization, Washington, DC - #89.14.30100.B1)

B1. The most important characteristic of this type of cooperation is open communication. Many times, agencies are unwilling to cooperate with certain groups, will not share information, do not publicize information, meetings or actions. All of this leads to the process eventually being tied up with protests and lawsuits, and does not benefit anyone. Agencies must be required to cooperate with all groups, especially those representing area residents and those who will be impacted by the proposal. (Domestic Livestock Industry, Albuquerque, NM - #80.15.30150.B1)

The most important characteristic of an effective joint-lead or cooperating agency relationship/process seems to be efficient, timely communication and exchange of information between the parties involved.

The ease and speed of electronic communications does facilitate the process, but should not be relied upon as the only medium of communication between meetings. (Mark A. Semlek, Chairperson, Crook County Board of Commissioners, et al, Sundance, WY - #73.5.30100.XX)

Chief among the requirements for an effective joint-lead or cooperative agency process is direct and open communication at both a decision-maker and staff level. (Individual, Fort Polk, LA - #654.1.30100.B1)

Inter-governmental communication, inter-agency communication, intra-agency communication, inter-personal communication, . . . all forms of communication should be emphasized. (United States Department of Energy, Washington, DC - #536.14.30300.B3)

INFORMATION SHARING

There is opportunity for simplifying NEPA decisions by making common information available. Many parts of a NEPA analysis could be “boiler plated” so individual analysts need not re-invent what is already available. Descriptions of Affected Environment, for example, should be shared within and between agencies operating in the same area. In Idaho, the Forest Service and Bureau of Land Management operate side-by-side in many places and should not re-write descriptions of landscapes they share. Background information on species and potential affects on species could likewise be shared among agencies.

We hope that sharing boilerplate information is a fairly simple matter of keeping an electronic library. The information can be archived by species name or by state, county, and watershed for landscape information. Each analyst using the information could then confine their efforts to updating the information instead of reproducing it from scratch. (Office of Species Conservation, Boise, ID - #578.5.30130.XX)

FULL DISCLOSURE OF AVAILABLE SCIENTIFIC INFORMATION

The characteristics of an effective joint-lead or cooperating agency relationship/process are . . . full disclosure of available scientific information to be shared by the entire team. (NEPA Professional or Association - Private Sector, Tucson, AZ - #82.11.30100.A1)

USE OF A COMMUNICATION PROTOCOL FOR COLLABORATION

Collaborative partners need to interact often, update each other regularly, discuss issues and differences openly, and convey all necessary information to one another as well as to others interested in the outcome of the collaboration process. Communication protocols for the collaborative effort should be negotiated and documented to provide ongoing guidance and accountability throughout the process. (United States Institute for Environmental Conflict Resolution, Tucson, AZ - #574.8.30130.B1)

FEEDBACK TO INPUT

The most important characteristics of [collaborative] processes include . . . feedback to input, especially that which is not incorporated (Recreational/Conservation Organization, Washington, DC - #89.14.30100.B1)

EARLY RESPONSE TO COMMENTS OR ACTIONS

Effective inter-agency coordination depends on prompt turnaround times of comments and/or actions by all agencies involved. Any potential problems responding within a specified timeframe should be communicated up front and early so a resolution can be obtained. No cooperating agency should fail to meet mutually agreed upon response timelines. (United States Navy, Washington, DC - #568.11.30150.B1)

Public Involvement

775. Public Concern: The CEQ Task Force should consider characteristics of effective collaborative relationships.

ADEQUATE PUBLIC INVOLVEMENT OPPORTUNITIES

An effective joint effort should, before making major decisions, ensure that public involvement opportunities are an integral part of the planning process and that public involvement be initiated as early in the planning and scoping process as possible and/or appropriate, depending upon the nature and extent of the proposed projects. Furthermore, every step is taken to ensure that all voices are heard in project public participation activities. This requires that all outreach materials be clearly written and understandable by a wide variety of readers and reviewers. (Individual, Alexandria, VA - #650.2.30100.XX)

FAIR REPRESENTATION OF ALL INTERESTS WHO HAVE A STAKE IN THE DECISION

The perceived legitimacy of collaborative processes depends on whether they are seen by other stakeholders and the public at large as representative of all affected interests and points of view. A fundamental principle of collaborative problem-solving efforts, therefore, is that all interests with a stake in the decisions should be represented in the process. This ensures that agreements reached will be perceived as legitimate by all relevant parties and will have broad support when implemented. (United States Institute for Environmental Conflict Resolution, Tucson, AZ - #574.6.30100.B1)

EARLY ENGAGEMENT OF STAKEHOLDERS AND SOURCES OF EXPERTISE

The most important characteristics of [collaborative] processes include . . . purposeful, early engagement of stakeholders and sources of expertise . . . (Recreational/Conservation Organization, Washington, DC - #89.14.30100.B1)

INTERAGENCY CONSULTATIONS PRIOR TO PUBLIC INVOLVEMENT IN ORDER TO FACILITATE MEANINGFUL PUBLIC COMMENT

A major flaw in the NEPA process is the failure to integrate agency consultations prior to the public involvement. Alternatives and appropriate mitigation measures are frequently developed through public involvement processes, only to be overturned by subsequent interagency consultations. Such post development measures leave the public feeling void of meaningful involvement. The purpose of the interagency consultation is to develop “reasonable and prudent measures.” How better to determine whether the measures are in fact reasonable and prudent than by the affected public. The listing of threatened and endangered species, designation of critical habitat and development of recovery plans all include public involvement. It is inconsistent to exclude the public from the consultation process that implements listing decisions. (Placed-Based Group, Sacramento, CA - #522.34.10400.F1)

Trust

776. Public Concern: The CEQ Task Force should consider characteristics of effective collaborative relationships.

TRUST BETWEEN AGENCIES

It is difficult to collaborate effectively when a high level of mistrust exists between agencies. In such situations, trust can develop only gradually—one step at a time. Collaborative approaches allow agencies to become more fully informed about the interests, needs, and constraints of the other agencies, as well as the rationale behind their positions. Trust is built on predictability, reliability, and consistency. Each time a mutual commitment is made and kept, an opportunity is created to build trust incrementally and improve relations. Each time a commitment is broken, trust diminishes, relations deteriorate, and skepticism increases. (United States Institute for Environmental Conflict Resolution, Tucson, AZ - #574.2.30140.B1)

HONESTY

Perhaps the most prevalent characteristic of an effective joint-lead or cooperating agency relationships that all the parties involved must maintain honesty. In the past, federal agencies were not always open or honest in what they were doing and therefore an enormous rift developed in the public's trust in the federal agency. Granting cooperating agency status to a county commission, for instance insures that the local government and the local population will be informed of what the agency is doing. (Domestic Livestock Industry, Washington, DC - #630.11.30140.B1)

LACK OF HIDDEN AGENDAS

The characteristics of an effective joint-lead or cooperating agency relationship/process are . . . lack of hidden agendas (NEPA Professional or Association - Private Sector, Tucson, AZ - #82.11.30100.A1)

CONFIDENCE THAT COLLABORATIVE EFFORTS WILL YIELD PROJECTS

Wallowa County is involved as a cooperating partner with the United States Department of Agriculture Forest Service, the State of Oregon, and the Nez Perce Tribe in watershed planning. This is truly collaborative planning. We have been and still are concerned that for collaborative planning to be successful, there must be a high degree of certainty that projects will come out of the planning effort. (B. Boswell Hayward, et al, Commissioners, Wallowa County Board of Commissioners, Enterprise, OR - #480.3.30140.XX)

Personnel/Education

777. Public Concern: The CEQ Task Force should consider characteristics of effective collaborative relationships.

ADEQUATE RESOURCES AND TRAINED STAFF

To be effective, collaborating NEPA partners need to have the necessary resources and staff capabilities to engage in the type of intensive negotiations often required to develop the procedural and substantive agreements associated with a joint interagency effort . . . Participating staff need to have the appropriate negotiation and collaboration skills both to effectively articulate the needs and interests of their agency and to work successfully with others in identifying opportunities for mutual gains. (United States Institute for Environmental Conflict Resolution, Tucson, AZ - #574.13.30100.B1)

EDUCATED AND AVAILABLE LEADERSHIP

Have an educated and available leadership (whether agency or private sector) that can foster and groom effective partnerships and cultivate volunteers as well as aid in education programs that will do the same. (Individual, Johnson City, TN - #631.8.30100.B1)

EMPLOYEE SHARING

We are particularly wary of those that jeopardize the retention of state authority to manage the fish and wildlife resources. State agencies should be involved in NEPA processes that involve fish and wildlife but they need to be protected from being co-opted into the federal family and thereby losing their independent authority to manage fish and wildlife. One way to do this is through employee sharing, whereby a state employee is loaned to a federal agency and becomes a federal employee for the term of the work. This way the experience and information is provided to the federal agency but the state agency is not officially a cooperator and is therefore not subject to court decisions as was the case in Wyoming. (Idaho Department of Fish and Game, Boise, ID - #579.6.30500.B2)

AGENCY ROTATION OF FACILITATORS AND NOTE-TAKERS

[B1] Response: This requires: facilitators and note takers are supplied by all agencies at different times. (Government Employee/Union, Grangeville, ID - #44.12.30100.B1)

DESIGNATION OF A REPRESENTATIVE FROM EACH AGENCY

Based on the Board's experience, an effective joint or cooperating agency relationship or process can be characterized as one through which each agency is represented by an individual with appropriate workload, technical and decisionmaking ability for the proposed action and the scope and nature of the NEPA document to be prepared. (Surface Transportation Board, No Address - #519.15.30100.B1)

Each cooperating agency should appoint one designee to work with the agency with the responsibility of informing the cooperating agency of the progress of the agency action. (Domestic Livestock Industry, Washington, DC - #630.12.30100.B1)

AGENCY REPRESENTATIVES ARE PERSONABLE AND HAVE EXPERIENCE AS BOTH A TEAM PLAYER AND A RESOURCE MANAGER

The staff representing the agencies is personable and has experience as a team player and practical field experience as a resource manager.

Example: A Wyoming USFWS field office became a cooperating agency early in the process for several big projects that could potentially affect TES [Threatened, Endangered, and Sensitive] species within their jurisdiction. One of their biologists became a member of the ID Team and regularly attended meetings and participated in alternative development and evaluation. This person helped the FS biologist develop their Biological Evaluations and was actively involved in the "no effect/may affect" determination on Grizzly Bear and Lynx. (Individual, Fort Collins, CO - #114.1.30100.B1)

AGENCY PERSONNEL WORK COLLABORATIVELY WITH COUNTERPARTS IN OTHER AGENCIES

For collaborative efforts to be successful, it is usually necessary that every level within each partnering agency (senior management, program management, project management, operations, scientific and technical staff, administrative staff) participate in working collaboratively with their counterparts in other agencies. Without a full commitment to and accountability for collaboration across an agency, staff in different departments and at accountability for collaboration across an agency, staff in different departments and at different levels within the agency can create numerous obstacles and roadblocks to success. (United States Institute for Environmental Conflict Resolution, Tucson, AZ - #574.7.30100.B1)

THIRD PARTY FACILITATOR

If you want agencies with an outside, 3rd party, objective facilitator to get projects off the ground right. This arbitrator can make sure everyone knows her/his role, how the project will be credited and who will take leadership roles based on the agency executives' agreements prior to work taking place on the ground. (Individual, Washington, DC - #55.2.30200.B2)

Partners in effective interagency collaborations understand when and how to effectively utilize the services of third-party neutrals to assist them in conducting assessments, convening participants, designing appropriate processes, facilitating productive communication, and resolving conflicts. Regardless of how the costs are shared to provide the third-party neutral services, all the cooperating agencies should expect impartial assistance from the neutral. (United States Institute for Environmental Conflict Resolution, Tucson, AZ - #574.12.30100.B1)

Timeframes

778. Public Concern: The CEQ Task Force should consider characteristics of effective collaborative relationships.

TIMELY PROCESSES

Uncertainty to the process: A common concern is that the process involves too much uncertainty caused by a number of factors, including scoping processes that do not end, conflicts between federal agencies, untimely comments from sister agencies, and ongoing analysis for fear of litigation. Recommendation: Commenting agencies should be required to comment early in the lead agency NEPA process, or else prohibited from commenting at all, specific timeframes for commenting and consultations between

federal agencies should be established to conclude the process and provide finality, uniform timetables should also be developed for all agencies dealing with similar subject matters, including scoping, comments, review, appeals, etc, and training should also be offered to state and federal officials to fully critique NEPA and implement it in a sound and timely manner. (Office of the Governor, State of North Dakota, Bismarck, ND - #635.5.30100.XX)

COORDINATION OF TIMETABLES AND MEETINGS

Commitment by the lead agency to coordinate timetables and meetings that take into account other agencies' resources, priorities, and prior commitments is also vital. Maintaining updated timeframes for the NEPA review process that have been developed in cooperation with other agencies before they are announced to the applicant and public, helps the review process to move more efficiently and enables agencies to work more productively and cooperatively. (Federal Aviation Administration, No Address - #534.12.30100.B1)

ESTABLISHMENT OF A REASONABLE SCHEDULE FOR INTERNAL DOCUMENT REVIEW AGREED ON IN THE BEGINNING

An effective joint or cooperating agency relationship or process can be characterized as one through which a reasonable schedule for the internal review of working drafts of the Environmental Assessment or EIS is agreed upon at the beginning of the project. (Surface Transportation Board, No Address - #519.15.30100.B1)

Meetings

779. Public Concern: The CEQ Task Force should consider characteristics of effective collaborative relationships.

PRE-PROJECT MEETINGS TO CLARIFY OBJECTIVES, METHODS, TERMS, AND REQUIREMENTS

Question: B1 Response: As exemplified in recent joint ventures with the BLM and USFS, they have succeeded quite effectively based on . . . Pre-project meetings clarifying objectives, methods and processes, and defining terms, acronyms and agency-specific requirements . . . (Individual, Washington, DC - #54.1.30100.B1)

REGULARLY SCHEDULED MEETINGS

Question: B1 Response: As exemplified in recent joint ventures with the BLM and USFS, they have succeeded quite effectively based on . . . Regularly scheduled meetings to stay on top of and incrementally reaching objectives and adjusting timelines . . . (Individual, Washington, DC - #54.1.30100.B1)

QUARTERLY MEETINGS

Public Land Advocacy recommends that agencies responsible for management activities throughout the various regions of the United States hold quarterly meetings in an attempt to apprise affected agencies of their activities. (Oil, Natural Gas, or Coal Industry, Denver, CO - #545.10.30200.XX)

CONVENIENT MEETING PLACES

[B1] Response: This requires: Meeting places that are convenient for all agencies involved—perhaps meeting places might be rotated. (Government Employee/Union, Grangeville, ID - #44.11.30100.B1)

Funding

780. Public Concern: The CEQ Task Force should consider characteristics of effective collaborative relationships.

ADEQUATE FUNDING

What are the characteristics of an effective joint-lead or cooperating agency relationship/process? . . . The process should be adequately funded and needed resources should be available in order to properly

address agency needs and concerns, while supporting shared responsibilities and workloads. (United States Environmental Protection Agency, No Address - #299.26.30100.B1)

Additional funding may be required for travel to meetings and, depending on the level of conflict or controversy for the required . . . travel to meetings, and depending on the level of conflict or controversy, for the services of a neutral facilitator. (United States Institute for Environmental Conflict Resolution, Tucson, AZ - #574.13.30100.B1)

Local governments are at a severe disadvantage when it comes to accessing federal planning at any level. The taxpayers are funding the environmental groups, who traditionally oppose local involvement, through tax breaks, legal fees and grants. [The] Council on Environmental Quality should explore what funding tools are needed to bring full participation from local government into the process (Willy Hagge, Supervisor, Modoc County Board of Supervisors, No Address - #636.9.30120.XX)

REIMBURSEMENT TO STATE AGENCIES FOR PREPARATION OF FEDERAL NEPA DOCUMENTS

It is important to recognize that with many of the existing federal agency/state agency relationships, states are often left to prepare NEPA documents for federal agencies. It's typically either that or risk so much delay waiting on the federal agency to draft the documents that it becomes impossible to complete the project. In those circumstances where states are the primary drafter of federal agency NEPA documents, the federal government ought to provide funding reimbursement for the state's effort. (Wisconsin Department of Natural Resources, Madison, WI - #458.6.30120.B1)

FUNDING FOR COUNTY CONTRIBUTIONS

[The] Council on Environmental Quality should highlight for the agencies the ability of existing regulations to pay for these county contributions to this process. This payment should be an accepted planning expense, just as the national burden transfers money between federal agencies. (Willy Hagge, Supervisor, Modoc County Board of Supervisors, No Address - #636.7.30120.XX)

Technology and Information Management

781. Public Concern: The CEQ Task Force should consider characteristics of effective collaborative relationships.

USE OF GOOD INFORMATION TECHNOLOGY TOOLS

What are the characteristics of an effective joint-lead or cooperating agency relationship/process? . . . The process should incorporate use of good information technology tools—such as Geographic Information Systems (GIS), supporting effective decisionmaking. . . . (United States Environmental Protection Agency, No Address - #299.26.30100.B1)

UNIFORM POLICY REGARDING DATA MANAGEMENT

Collaboration efforts should be encouraged, with established best practices dictating uniform policies for data management and manipulations. (Port Authority of New York and New Jersey, New York, NY - #457.5.30100.B1)

COMMON DATA SETS FOR EACH AGENCY'S JURISDICTION

All . . . agencies should use a set of common data pertaining to each jurisdiction. (Individual, Seattle, WA - #499.8.30100.XX)

STANDARD PROTOCOLS FOR GATHERING AND MANAGING INTERAGENCY DATA

In order to improve collaboration, making it more efficient and useful, federal agencies need to adopt consistent, compatible and technically rigorous standards and protocols for obtaining, managing and reporting data used in NEPA analyses. It is necessary for agencies to adopt common procedures, data elements, land scales and graphic symbols for each resource element to ensure cross boundary compatibility in data acquisition, analysis, synthesis and reporting. In addition, an interagency data

management tool should be established that would provide for systematic documentation and archiving of all inventory, monitoring and research data. Such data should be easily retrieved by each agency for use in land management planning, resource stewardship training, and preparation of project-level NEPA documents. (Oil, Natural Gas, or Coal Industry, Denver, CO - #545.8.30100.XX)

Examples of Effective Collaborative Relationships

782. Public Concern: The CEQ Task Force should consider examples of effective collaborative relationships.

DIVISION OF NATURAL RESOURCES AND U.S. FISH AND WILDLIFE SERVICE JOINT NEPA/SEPA EIS

When DNR worked with the United States Fish and Wildlife Service (USFWS) to develop a joint NEPA/SEPA EIS for the state lands HCP (example #3), it was very helpful to have a single high-level person at each agency involved. For example, during the writing of the EIS, the Commissioner of Public Lands and the HCP office lead and assistant regional director of the USFWS were continually and personally involved in the NEPA/SEPA process. This allowed a primary contact from each agency for resolving outstanding issues that could not be resolved at lower levels.

[Example 3: The third example includes a joint NEPA/SEPA EIS that was prepared for a multi-species HCP covering DNR's state trust lands. For purposes of writing this document, DNR shared co-lead agency status with the USFWS.] (Washington State Department of Natural Resources, Olympia, WA - #128.2.30100.B1)

FEDERAL HIGHWAY ADMINISTRATION'S RED BOOK

The Federal Highway Administration prepared a Red Book to facilitate cooperation among the Federal Highway Administration, the Corps of Engineers, the Environment Protection Agency, the Fish and Wildlife Service and the National Oceanic and Atmospheric Administration. This effort did improve the coordination level and while it was prepared in 1988, it could be updated and serve as a model for other agencies to follow.

[The] Council on Environmental Quality should adopt and update the Red Book to serve as a model for all the agencies to follow and put the Red Book on NEPANet. (NEPA Professional or Association - Private Sector, Washington, DC - #450.12.30130.XX)

NAVY AND NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION FISHERIES SERVICE COOPERATION FOR THE SHOCK TRIAL OF THE USS WINSTON S. CHURCHILL

An example of good collaboration was the cooperating agency relationship between the Navy and National Oceanic and Atmospheric Administration Fisheries Service (NFS) for the Shock Trial of the USS Winston S. Churchill (DDG-81). Working cooperatively, Navy and National Oceanic and Atmospheric Administration Fisheries Services were able to leverage the expertise that resides in each agency. For example, the Navy has years of experience identifying explosive propagation fields, while National Oceanic and Atmospheric Administration Fisheries Services has expertise in the effects of energy on marine mammals. (United States Navy, Washington, DC - #568.10.30140.B1)

BURNED AREA EMERGENCY REHABILITATION PARTNERSHIP

Probably the best example to date of intergovernmental cooperation involving state and local governments, and federal agencies, is the recent Burned Area Emergency Rehabilitation Partnership stemming from the New Mexico Penasco fire of 2002.

Although many factors were involved in the making of this partnership over many year's time, this is a success that the Task Force should review on how affected parties responded to an emergency situation. The same effort should be pursued on day-to-day partnerships between agencies and governments. This particular instance required communication, consultation, cooperation, and conservation that immediately dealt with: preservation of resources, restoration, recreation, use, service, science, and management principles and came in close to, or under 50 percent of projected timelines and expenditure of funding.

The above partnership efforts were inclusive of: United States Department of Agriculture/Forest Service, United States Department of Agriculture's INRCS, Otero County, New Mexico, local fire departments, New Mexico State Forestry, the Village of Cloudcroft, New Mexico, New Mexico State Highway and Transportation, Soil and Water Conservation District, The New Mexico Youth Conservation Corps, The community of Mayhill, New Mexico, local landowners and local businesses. (Multiple Use or Land Rights Organization, Rock Springs, WY - #453.33.30500.B1)

FOREST SERVICE AND BUREAU OF LAND MANAGEMENT ON ENDANGERED SPECIES ACT CONSULTATION DOCUMENTS IN CENTRAL IDAHO

This concept is probably best illustrated by example. To demonstrate an effective relationship, it is only necessary to examine the joint-lead process involving the Forest Service and Bureau of Land Management on ESA consultation documents in central Idaho. Similar goals and objectives make cooperation easy. This is particularly true in the areas of fire management and fuel reduction on public lands. Although there may be differences of opinion among individuals, the overall objectives are sufficiently similar to allow smooth interaction and coordination of efforts. As is always the case, open agendas lead to progress. (Bob Cope, Commissioner, Lemhi County Board of Commissioners, Salmon, ID - #70.12.30100.B1)

CUSTER COUNTY, IDAHO, ENVIRONMENTAL STEWARDSHIP PROGRAM AND MODEL WATERSHEDS PROJECT

B1. Several examples of federal and inter-government collaboration exist in Custer County. Two would be the Environmental Stewardship Program and the Model Watersheds Projects. The common thread being a local committee of agencies, permittees, the environmental community and others working to reach a common goal. (Lin Hintze, Chairperson, Custer County Board of Commissioners, Challis, ID - #104.3.30100.B1)

IDAHO HIGH LEVEL WASTE AND FACILITIES DISPOSITION EIS

Department of Energy's Idaho High Level Waste and Facilities Disposition Environmental Impact Statement (ID HLW EIS), planned for issuance in Fall 2002, is an example of a successful inter-governmental collaboration. To facilitate cooperation/coordination between Department of Energy and the State of Idaho, both agencies agreed to a formal Memorandum of Understanding (MOU) that clearly identified roles and responsibilities, communications pathways, and methods for elevating issues to higher levels of authority within each agency for resolution. In addition, the Memorandum of Understanding allowed differing opinions to be presented in the NEPA document. The Idaho High Level Waste EIS Memorandum of Understanding and cooperating agency status for the State of Idaho resulted in both parties understanding the issues and agreeing on how these issues were to be presented to the EIS. Both parties agreed on the majority of issues and presentation of impacts analysis. The State of Idaho developed a foreword in the document that presented those areas where the state had issues or disagreed with Department of Energy. The State of Idaho identified a preferred waste management alternative to be identified in the Final EIS that differs from Department of Energy's preferred waste management alternative. (United States Department of Energy, Washington, DC - #536.9.30100.B1)

POWER UP WISCONSIN

Minnesota Power has a number of projects currently in progress. One project, identified as Power Up Wisconsin, is the construction of a 345kV high voltage transmission line that originates in northern Minnesota and terminates in central Wisconsin. Power Up Wisconsin has received approval from both Minnesota and Wisconsin and is now in the process of acquiring federal, state, and local permits/licenses for the construction and operation of the line. Federal agencies such as the National Park Service and U.S. Army Corps of Engineers are involved. Initial public involvement activities for the Power Up Wisconsin project began in early 1999 and the project still has not been totally permitted.

Our experience with this project demonstrates a need to eliminate duplicative environmental review processes between federal and state agencies and a need to streamline the environmental review by identifying time limits for decisionmaking. We suggest a "lead" federal agency be designated at project inception to coordinate environmental review and permitting—especially for a high voltage transmission line like Power Up Wisconsin that cross multiple states and requires review by several federal agencies. Such action would be similar to the federal process for siting gas transmission pipelines where the

Federal Energy Regulatory Commission serves as the lead and coordinates all federal agencies involved with project review. This process would facilitate interagency discussion at the federal level and likely streamline decisionmaking. (Utility Industry, Duluth, MN - #108.1.30100.XX)

WASHINGTON STATE'S ENVIRONMENTAL PERMIT STREAMLINING ACT

Washington State's Environmental Permit Streamlining Act enacted in 2001, structures Washington State Department of Transportation's efforts with federal, state, tribal, and local agencies to develop streamlining processes for transportation projects in the NEPA and the permitting stages. Several subcommittees are actively exploring topics such as: Creating "one-stop permitting" rather than sequential permit approvals, coordinating requirements for environmental information and defining level of detail needed at various phases of project development, expedited dispute resolution and increased capacity and expertise among staff, developing and tracking environmental metrics to accurately report and analyze results, and creating processes to achieve watershed-based environmental mitigation and cooperative enhancement of natural and cultural resources. (Washington State Department of Transportation, Olympia, WA - #551.10.30200.B2)

SIGNATORY AGENCY COMMITTEE AGREEMENT TO INTEGRATE AQUATIC RESOURCES PERMIT REQUIREMENTS INTO THE NEPA AND STATE ENVIRONMENTAL POLICY ACT PROCESSES IN THE STATE OF WASHINGTON

The Federal Highway Administration and Washington State Department of Transportation recently lead the revision of a 1996 "NEPA/404 merger" agreement among federal and state resource and regulatory agencies. The new revision is titled: Signatory Agency Committee Agreement to Integrate Aquatic Resources Permit Requirements into the National Environmental Policy Act and State Environmental Policy Act Processes in the State of Washington, State Agency Committee Agreement. The agreement has recently been signed by all agencies.

The revised agreement contains Washington State's approach to improving resource agency involvement in development of EISs. It defines how agencies will participate in EIS projects and clarifies the use of NEPA as the umbrella for resource and regulatory agency concerns and approvals for compliance with the Endangered Species Act, Section 404 and other laws and regulations. Its goal is a clear, consistent, and efficient process to improve the ability to achieve EIS documents acceptable to all parties. Improvements over previous procedures have been made in the following areas: More predictable timelines, more frequent meetings, clearer concurrence points, clearer issue resolution process with specific timelines and elevation procedures, standard language for agencies' roles, and commitment to education, participation, performance evaluations and continuing improvement. (Washington State Department of Transportation, Olympia, WA - #551.8.30100.B1)

OREGON DEPARTMENT OF TRANSPORTATION LUTRAQ PLAN

LUTRAQ: Model for Public Involvement, Improving Analysis Methods, and Considering Reasonable Alternatives in a NEPA Review. The "Making the Land Use Transportation Land Use Connection", or LUTRAQ initiative was launched by environmental and civic activists in 1988 following their legal challenge to a decision by Oregon Department of Transportation to build the Western Bypass freeway around the west side of metropolitan Portland. The group 1000 Friends of Oregon, a land use planning advocacy group, initiated their own alternative transportation planning process, ultimately enlisting support from foundations, regional and state planning and transportation agencies, United States Environmental Protection Agency, and the Federal Highway Administration. Through a collaborative process with outside consultants, government agencies, and stakeholders, the metropolitan planning agency's computer transportation analysis models were upgraded to enhance their sensitivity to pedestrian friendliness and transit accessibility impacts on travel behavior. The enhanced analysis tools were used to evaluate a transit-oriented development transportation-land use scenario for the west side of Portland. Stakeholders helped shape alternatives and consider impacts of various alternatives through an extensive public outreach program.

Ultimately, Oregon Department of Transportation adopted the LUTRAQ alternative, which included new light rail lines, minor local road improvements, pedestrian and bicycle enhancements, and changes to local zoning, as the preferred option in their 1995 Western Bypass Study Alternatives Analysis. Oregon Department of Transportation decided against construction of the Western Bypass freeway

because it would produce much more sprawl and pollution. (Preservation/Conservation Organization, Washington, DC - #535.3.30100.XX)

WESTERN GOVERNORS' ENLIBRA PRINCIPLES FOR ENVIRONMENTAL MANAGEMENT

The Western Governors' adopted the Enlibra principles for environmental management. (See attached Western Governors' Association Policy Resolution 02-07, "Principles for Environmental Management in the West.") These eight principles are introduced to participants early in the collaborative process. Consideration of the problem at hand through the prism of the principles prevents jumping to conclusions and usually leads to a positive opening to the collaboration. The issue at hand is reframed in view of the principles. This yields a better understanding of the problem, areas of agreement among governments and stakeholders, and a more open-minded view of possible solutions.

With respect to the quality assurance principles, they proved to be invaluable to safeguarding deliberations from spurious data and scientific conclusions. In the Grand Canyon Visibility Transport Commission for example, the principles called for multi-stakeholder review, peer review, and occasionally, independent contractor analysis before Commission acceptance of the data or analyses. Having this quality assurance process allowed the Commission to seek and accept more data from the parties for its deliberations while maintaining professional credibility and acceptance for its findings. (Western Governors' Association, Denver, CO - #588.5.30100.XX)

GRAYS HARBOR LATERAL PROJECT

The Grays Harbor Lateral project (example #2) provides a positive example of intergovernmental collaboration. During the public comment periods for this proposal, DNR submitted comments to FERC, stating that the proposed site for this project was subject to state Forest Practices Rules. FERC later contacted DNR and incorporated the state requirements into its preferred alternative in the final EIS. Following adoption of the preferred alternative, FERC (Federal Energy Regulatory Commission) found that the timelines associated with the rules were not sufficient for their purposes and they later received court permission to extend these deadlines. However, from a project management perspective, FERC's willingness to formally acknowledge DNR's comments and work through existing state requirements allowed their project to proceed quickly with relatively little impact to both agencies. The result was full DNR support of the final project without additional delays. The primary review process of this project proposal lasted less than two years.

The . . . [example includes] a comparison of Environmental Impact Statements (EISs) prepared under NEPA by the Federal Energy Regulation Commission (FERC). . . . [This example] is an EIS that was developed for a pipeline installation project called the Grays Harbor Lateral Project, which was also proposed for construction on DNR state trust lands. This area includes forestlands that were subject to state Forest Practices Rules. (Washington State Department of Natural Resources, Olympia, WA - #128.1.30500.B1)

GREEN RIVER BASIN ADVISORY COMMITTEE

Bureau of Land Management, Jack Morrow Hills - Coordinated Activity Plan Draft EIS of 2000 as a tiered component of the Green River Resource Management Plan-Record of Decision of 1997 in relation to a later Supplemental EIS of former Secretary of the Interior Bruce Babbitt which appeared to be the primary reason behind the local interest in 40 Code of Federal Regulation [section] 1501.6—Cooperating agencies; [section] 1506.2—Elimination of duplication with State and local procedures; and [section] 1508.5—Cooperating agency to a three county area of Wyoming. (Multiple Use or Land Rights Organization, Rock Springs, WY - #453.32.30100.B1)

HANFORD COMPREHENSIVE LAND-USE PLAN EIS

[A] successful example of inter-governmental collaboration by the Department of Energy is the development of the Hanford Comprehensive Land-Use Plan EIS in Washington State. This land-use plan EIS, issued September 1999, involved cooperating agency status for three Federal agencies, three county governments, and a city government; a tribal agency and a confederation of Tribes participated as consulting tribal governments. Together these diverse entities, each with very different missions and goals, reached substantial agreement on Department of Energy's land-use plan including: descriptions of land category definitions, the framework for environmental analysis, and the planning policies and implementing procedures of the land-use plan. However, some of the cooperating agencies and

consulting tribal governments strongly favored mutually incompatible future land uses, especially with regard to industrial and agricultural development versus environmental preservation. To resolve these conflicts, cooperating agencies and consulting Tribes developed their own alternatives for consideration in the Draft EIS, using guidelines and a common outline to yield technically parallel information. Although this collaborative process required additional time, it enabled preparation of an EIS that adequately considered the full range of reasonable alternatives. Department of Energy and the United States Fish and Wildlife Service each issued Records of Decision based on this EIS. (United States Department of Energy, Washington, DC - #536.10.30100.B1)

Barriers to Effective Collaborative Relationships

Summary

This section includes the following topics: Barriers, and Examples of Ineffective Collaborative Relationships.

Barriers – Respondents list numerous barriers to effective collaborative relationships. These barriers fall into the categories that follow.

General Characteristics – Respondents suggest several general barriers to effective collaborative relationships. These barriers include lack of understanding and leadership; lack of understanding of agency-specific factors and concerns; lack of understanding of communities' relationships with natural resources on public lands; and lack of successful collaboration models. One federal agency remarks, "For those progressive innovators within agencies who wish to explore the use of more collaborative approaches to NEPA, there are few documented successful examples that can serve as process models. Another obstacle is that, for agencies to recognize the relevance and applicability of case examples, they often need to have customized examples that explicitly incorporate their own specific mission requirements and regulatory constraints

Some respondents point to agency members' inability to be objective, refusal to try something new, and general pessimism as barriers to effective collaboration. Finally, some maintain that the collaborative process itself is sometimes used inappropriately. According to one federal agency, "Interagency or intergovernmental collaboration is not necessarily an appropriate approach to pursue in every situation or at a given time in an otherwise appropriate situation. Agencies need to learn how to better assess the prospects for successful collaboration and how to positively alter those prospects before convening a collaborative effort with other partners. Agencies also need to be able to evaluate their own internal readiness and staff capability to productively engage in a collaborative effort."

Goals/Objectives – Conflicting agency goals and missions are commonly suggested barriers to effective collaborative relationships. Several stress that "conflicts among federal agency goals/missions are probably the major barriers to effective collaborative agreements." Related barriers suggested by respondents include an agency's single focus on its own mission, the view that an agency's mission is adversarial to the project, and differences in agency objectives and application of environmental laws. Additionally, some note that an agency's pre-decisional intent to pursue a preferred alternative "can hinder entering into an effective collaborative agreement with another involved agency."

Commitment to Collaborative Process – A number of respondents suggest that a lack of commitment to the collaborative process impedes successful relationships. This lack of commitment, people suggest, can take the form of lack of agency commitment to planning

direction, lack of federal agency interest, and lack of incentive for agencies to use collaborative processes. According to one federal agency, “[There are] inadequate organizational incentives rewarding collaboration and deterring reliance on adversarial unilateral approaches.” Finally, respondents maintain that an agency’s failure to make NEPA a priority “can stall the NEPA process significantly through delayed release of Biological Evaluations or Assessments or similar reports.”

Teamwork/Cooperation – A number of respondents state that a major barrier to effective collaboration is the simple failure to cooperate and work together as a team. This includes the failure to share information, the failure to coordinate information and actions, and the failure to establish or abide by concurrence points.

Several respondents point to the lack of, or failure to accept, a good conflict resolution process as a major barrier to effective collaboration. One federal agency remarks, “In high conflict situations, agencies often may require a credible convener to bring them together to work on a mutual solution. Neutral independent facilitators may also be needed to help agencies negotiate the difficult issues associated with complex collaborative decision-making. Some agencies may not be aware of how to efficiently access these services. In addition, agencies may be reluctant to take advantage of neutral assistance because they equate this assistance with relinquishing control over a decision-making process or perceive it as a failure to solve their own interagency challenges.”

Finally, some mention the lack of protocols for joint fact-finding and the failure to accommodate the needs of other agencies as barriers to effective collaboration.

Roles/Relationships – Several respondents cite problems associated with roles and relationships as barriers to effective collaboration. “One potential barrier to joint state and federal processes,” states one federal agency, “involves jurisdictional issues where more than one party may have overlapping responsibilities for the same project.” Related problems include lack of agreed upon roles and responsibilities, agency differences in decision authority, and inability to make decisions. Some claim that interference from special interests can impede the ability of the lead agency to effectively lead the process.

Finally, a few charge that sometimes the public misinterprets the roles of cooperating agencies. According to one federal agency, “Public perception has been a key issue for National Marine Fisheries Service. In several rulemaking instances where other Federal agencies had cooperating agency status in conducting the environmental analysis and in preparing NEPA documents, the public had misinterpreted this to indicate that National Marine Fisheries Service was abrogating certain responsibilities as the regulating agency. This situation suggests that National Marine Fisheries Service needs to explain better to the public what roles and responsibilities cooperating agencies have under NEPA”

Inter-/Intra-Agency Conflict – A number of respondents suggest that inter/intra-agency conflicts hinder collaborative efforts. One preservation/conservation organization writes, “A pervasive problem in NEPA decisionmaking is a lack of coordination or outright conflict between federal agencies and or between them and state or local agencies.” Some state that intergovernmental collaboration requirements themselves may conflict with existing state processes, thus “states must have the flexibility to develop projects consistent with their needs.” A few point to the failure of regional branches of federal agencies to comply with guidance from Washington, D.C., as a barrier to effective collaboration. Finally, some charge that there is sometimes interagency

disagreement on standards and methods of effects analysis, as well as disagreement on the adequacy of proposed environmental mitigation.

Single-Agency Dominance – According to some, the reluctance of agencies to share control creates a barrier to effective collaboration. A federal agency writes, “Agencies are often reluctant to pursue interagency or intergovernmental collaboration because they equate it with relinquishing their control over a decision. Agencies may perceive this stance to be appropriate based on their conviction that they cannot legally entrust their decision-making authority and accountability to others. Agencies frequently do not understand that a collaborative process can, in fact, help ensure that their key needs and requirements are satisfactorily addressed before an option under collective considerations can become a truly viable decision.” A recreational/conservation organization adds, “More often than not, the federal agency that is responsible for a NEPA analysis and documentation makes it difficult or impossible for other agencies to participate effectively in the NEPA process because it wants to maintain complete control of the planning process.”

Participation – A number of respondents point to lack of participation as a barrier to effective collaborative relationships. One individual comments, “I have seen instances where a ‘cooperating agency’ provides too little to the NEPA process either because they do not have the resources or interest in fully participating with the lead agency in the process. As a consequence, the quality of the decision-making process is lessened.” Several maintain that local governments and American Indian governments alike are often limited in their capacity to fully participate in the planning process. At the same time, respondents charge that sometimes agencies refuse to accept cooperating agency status. According to one elected official, a significant difficulty is “getting the regulatory agencies to the table. We need to have some one from these agencies at the table that has enough authority to make a hard commitment. Currently, they do not have to play at all. All the good work by every one else is to no avail if the regulatory agencies are not in the formula.”

Laws/Acts/Agency Policies and Regulations – Some respondents point to laws, acts, and agency policies and regulations as barriers to effective collaborative relationships. Some argue on a general level that “Congress has failed in its duty to American citizens to clarify its legislative intent” in creating NEPA, and that this lack of clear congressional guidance is itself a barrier to effective collaboration. Some mention specific acts—the Federal Advisory Committee Act, the Freedom of Information Act, and Sunshine laws—as barriers to collaboration.

According to some, consultation requirements themselves are sometimes vague. One mining industry representative claims, for example, that ineffective collaboration can be traced to “unspecified and undefined ‘government to government’ consultation requirements that are being orchestrated by the Environmental Protection Agency.” Several other respondents charge that agencies sometimes disregard the regulations requiring local government cooperation.

Different Regulatory Interpretations – A number of respondents do not point to the laws, acts, and agency policies and regulations themselves as barriers to effective collaboration, but rather to the different interpretations of what those acts/regulations require. Several argue specifically that differences in agency interpretation and implementation of NEPA make collaboration difficult. One federal agency writes, “The Forest Service and other federal, state, and local agencies can find it difficult to collaborate on decisions and environmental analyses due to several factors. Differences in agency NEPA regulations can cause decision delays when one

agency's process is more streamlined than another. For instance, when two or more agencies have decisions to make on a joint proposal, an agency that has a categorical exclusion for the proposal may be slowed down in its decision-making when the other agencies require documentation in an environmental assessment or an environmental impact statement. Such differences can hinder inter-governmental collaboration."

Respondents list several related barriers to collaboration—differences in regional interpretations of requirements, lack of understanding regarding the flexibility of regulations, lack of consistency in local planning, and lack of agency understanding regarding the roles and effects of NEPA analysis.

Communication – Several respondents claim that communication barriers hinder effective collaborative relationships. According to some, the failure of consulting agencies to make their views known early in the process creates challenges for all parties involved in collaboration. Others say that inadequate review of interagency comments can impede effective collaborative relationships. According to one recreation/conservation organization, "Often the responsible federal agency processes the solicited and received comments of state wildlife agencies and other federal agencies in the same manner it processes comments from the general public."

Public Involvement – Several respondents mention public involvement as a barrier to effective collaborative relationships. According to some, there is too often a lack of full participation in the scoping process, a lack of continued interaction by all stakeholders to address concerns, and a disregard for comment periods.

On the other hand, some contend that too much emphasis on public involvement, in the absence of guaranteed results, can hinder effective collaboration. One wood products industry representative writes, "An acute problem with collaboration is there are no guarantees. Many individuals, interest groups, and other parties suffer from "participatory fatigue" due to excessive public involvement and collaboration and this is exacerbated when the final product is never implemented."

Analysis/Documentation Demands – A number of respondents state that analysis and documentation demands create challenges for collaboration. These challenges include the volume of environmental documents, duplication of state and federal analysis requirements, continuous requests for new information and analysis, the absence of required limitations on additional studies, overemphasis on NEPA documentation and litigation protection, and the requirement to document alternatives to proposed action in an EIS or EA prior to a decision. Additionally, some say that federal agencies are sometimes unable to provide guidance on incorporating state or local requirements into joint documents, and this lack of guidance makes collaboration difficult.

Trust – Some maintain that lack of trust is a major barrier to effective collaborative relationships. One federal agency remarks, "The mutual 'trust' factor is significant. Particularly given limited resource concerns, agencies will be less inclined to collaborate or partner with agencies with which trusting and respectful relationships have not been developed." Respondents state that trust is compromised when decisions are based on politics rather than science; when agency representatives are egotistical or otherwise display disruptive or suspicious behavior during collaboration meetings; and when agencies maintain hidden agendas and/or bias regarding projects.

Personnel/Education – A number of respondents state that problems associated with personnel and education can hinder the collaboration process. Respondents report that both the lack of sufficient staff and personnel changes can be a problem. One federal agency writes, “Personnel changes at cooperating agencies can undermine previously negotiated impact assessment methodologies and mitigation strategies, and result in substantial project delays while the new staff learns about the project, the Board’s process, and the scope of the Board’s jurisdiction.”

People also point to poor attitudes of agency employees, lack of education on current scientific developments, and inadequate support from agency management to resolve issues as serious barriers to effective collaborative relationships.

Timeframes – Numerous respondents point to problems associated with timeframes as barriers to effective collaboration. These problems include unrealistic timeframes, the failure of agencies to agree on timelines, and the failure to subscribe to project schedules. One recreational organization remarks, “Delays can be attributed to the lead agency’s failure to require consulting agencies or entities to subscribe to project schedules for scoping, comment periods, and other steps in the process. These trends undermine the NEPA process and cause unnecessary delays.”

People also contend that inordinate time is spent on strategic planning and on internal review of environmental documents, that some problems and disputes are not identified until late in the process, and that some agencies fail to comment within scheduled timeframes.

Funding – A number of respondents suggest that limited resources—particularly funding—can impede effective collaborative relationships. One individual writes, “Limited finances and staffing prevent state agencies from participating effectively as a cooperating or joint lead agency for review of proposed federal actions. Resources expended by state or local agencies to cooperate with federal partners essentially results in the cooperating agency having less ability to carry out their own mission. We recommend that funding be earmarked within the budget of the federal agency proposing an action and used to enable the appropriate state and/or local agencies to participate in the cooperation desired by the Council on Environmental Quality.”

Technology and Information Management – A few respondents comment that technology and information management can present challenges to effective collaboration. Challenges include differences in technological capabilities in general and computer capabilities in particular, and inconsistent use of environmental/ecological data and/or modeling techniques.

Examples of Ineffective Collaborative Relationships – Respondents describe a number of examples of ineffective collaborative relationships. Examples include collaboration between federal agencies as well as between federal agencies and state and local governments.

Barriers

General Characteristics

783. Public Concern: The CEQ Task Force should consider the barriers/challenges to effective collaborative relationships.

LACK OF UNDERSTANDING AND LEADERSHIP

[B2] Lack of understanding and leadership. (Individual, McCall, ID - #34.1.30200.B2)

LACK OF UNDERSTANDING OF AGENCY-SPECIFIC FACTORS AND CONCERNS

Our [Federal Aviation Administration] May 2001 report to Congress . . . identified common causes of poor interagency coordination and cooperation: . . . lack of understanding of aviation factors and extent of Federal Aviation Administration and airport proprietor controls, resulting in disagreements on aviation need and requests for additional alternatives and infeasible mitigation in an EIS . . . (Federal Aviation Administration, No Address - #534.13.30200.B2)

LACK OF UNDERSTANDING OF COMMUNITIES' RELATIONSHIPS WITH NATURAL RESOURCES ON PUBLIC LANDS

Agencies should understand the community's relationship with the natural resources on public lands and should seek early input for a better understanding on their part. This will lead to a better working relationship between the federal agency and the local cooperating agency. (Domestic Livestock Industry, La Grande, OR - #496.22.30300.B3)

LACK OF SUCCESSFUL COLLABORATION MODELS

[There are] few available successful examples to serve as models for interagency and intergovernmental collaboration on NEPA.

For those progressive innovators within agencies who wish to explore the use of more collaborative approaches to NEPA, there are few documented successful examples that can serve as process models. Another obstacle is that, for agencies to recognize the relevance and applicability of case examples, they often need to have customized examples that explicitly incorporate their own specific mission requirements and regulatory constraints. (United States Institute for Environmental Conflict Resolution, Tucson, AZ - #574.24.30200.B2)

INABILITY TO BE OBJECTIVE

If the folks guiding the process in the lead agency cannot stand apart from their agency's positions, then input will be less free and the result less circumspect. (Individual, Katy, TX - #189.1.30200.B2)

REFUSAL TO TRY SOMETHING NEW

Question: B2 Response: The greatest barriers and challenges that hinder the ability to work effectively under collaborative agreements are when one agency or group says, "We don't do it that way," or "We've never done it that way." (Individual, Washington, DC - #55.1.30200.B2)

PESSIMISM

In general, pessimism overrides collaboration. Agencies such as NMFS who enter consultations with negative expectations are rarely disappointed. (Bob Cope, Commissioner, Lemhi County Board of Commissioners, Salmon, ID - #70.14.30200.B2)

INAPPROPRIATE APPLICATION OF COLLABORATIVE PROCESSES

Interagency or intergovernmental collaboration is not necessarily an appropriate approach to pursue in every situation or at a given time in an otherwise appropriate situation. Agencies need to learn how to better assess the prospects for successful collaboration and how to positively alter those prospects before convening a collaborative effort with other partners. Agencies also need to be able to evaluate their own internal readiness and staff capability to productively engage in a collaborative effort. (United States Institute for Environmental Conflict Resolution, Tucson, AZ - #574.16.30200.B2)

Goals/Objectives

784. Public Concern: The CEQ Task Force should consider the barriers/challenges to effective collaborative relationships.

CONFLICTING AGENCY GOALS AND MISSIONS

Conflicts among federal agency goals/missions are probably the major barriers to effective collaborative agreements. (Federal Aviation Administration, No Address - #534.13.30200.B2)

The Forest Service experiences time delays when working with regulatory agencies such as the US Fish and Wildlife Service and National Marine Fisheries Service due to different agency missions. The regulatory agencies concerned with short-term impacts may inhibit the Forest Service in reaching long-term environmental objectives. For example, a thinning and controlled burning project can have adverse short-term impacts on water and air quality that may be of particular concern to the regulatory agency. However, if a regulatory agency stops such projects in the consultation process, the adverse long-term impacts can be much greater, including enormous fires; watershed damage; widespread loss of biodiversity and wildlife habitat; and massive, uncontrolled smoke emissions. While relationships and cooperation often prevail in these situations, collaborative efforts are difficult when agencies are not working on mutual objectives. Sometimes, the collaborative working relationship is so important to the individuals, that Forest Service and regulatory agency employees will take a long time to try to reach consensus, adding to process and decision time. (United States Department of Agriculture, Washington, DC - #110.5.30210.XX)

In general, differences in agency missions, NEPA regulations and policies can present barriers to establishment of effective joint-led or cooperating agreements. Differences in agency regulations and policies may include varying requirements and sensitivities toward public involvement for preparation of Environmental Assessments and other NEPA documents, and discrepancies in requirements for processing of NEPA documents for decision-making at various levels of agency hierarchy and authority. (Individual, Fort Polk, LA - #654.4.30200.B2)

With respect to barriers to effective collaborative agreements, joint-lead or cooperating agency status, conflicts exist among the missions of the various agencies and states, which serve to chill cooperation. This is particularly true of the Environmental Protection Agency (EPA). There have been several instances where Environmental Protection Agency Region Eight had been invited to participate in agencies' ongoing NEPA processes. However, the Environmental Protection Agency stated that it is not its responsibility to participate in the NEPA process, but rather to submit comments on the finished product. While we acknowledge that one of Environmental Protection Agency's responsibilities is to evaluate EIS documents, it is highly unreasonable for the agency to bring up issues that should have been raised during preparation of the documents. This onerous situation must be resolved. Moreover, Environmental Protection Agency must make an effort to recognize the roles of the land management agencies and their decision-making processes. With regard to states, Wyoming for one has had difficulty being accepted as a cooperating agency even though the regulatory language at 43 Code of Federal Regulation 1610.3-1 [is] clear on that point. (Oil, Natural Gas, or Coal Industry, Denver, CO - #545.9.30210.XX)

The greatest barrier and challenge to entering into an effective collaborative agreement among co-lead or participating agencies is that they often have conflicting (and single-purpose) mandates. (Port Authority of New York and New Jersey, New York, NY - #457.4.30210.B2)

SINGLE FOCUS ON OWN AGENCY MISSION

The major barrier is each agency's narrow focus on its own mission. Resource agencies do not want to be associated with WisDOT on projects that affect resources under their jurisdiction. Their rationale seems to be a false desire to maintain their perspective or authority and avoid being accused of caving in to transportation interests. Also, negotiations in the permit process may lead to mitigation blackmail. WisDOT has, on numerous occasions been denied 401 water certification until we acceded to demands unrelated to Section 404 at other locations on the same project. Here is an example of a failure of federal agencies to honor the umbrella NEPA joint and cooperating agency process. (Wisconsin Department of Transportation, Madison, WI - #214.14.30200.B2)

VIEW OF AGENCY'S MISSION AS ADVERSARIAL TO PROJECT

Our [Federal Aviation Administration] May 2001 report to Congress . . . identified common causes of poor interagency coordination and cooperation: . . . view of mission as adversarial to airport expansion. (Federal Aviation Administration, No Address - #534.13.30200.B2)

DIFFERENCES IN AGENCY OBJECTIVES AND APPLICATION OF ENVIRONMENTAL LAWS

Federal and Inter-governmental Collaboration is vital to the NEPA process for Air Force installations, which serve as a host for various governmental agencies. Increasingly, we are faced with the problem that governmental agencies have different objectives when implementing environmental requirements. Training for joint-lead and cooperating agencies should emphasize consistency in the application of environmental initiatives and laws. (United States Air Force, Washington, DC - #525.12.30110.B1)

PREDECISIONAL INTENT TO PURSUE A PREFERRED ALTERNATIVE

B.2. - The desire of the ICAD agency to pursue its preferred alternative can hinder entering into an effective collaborative agreement with another involved agency. An example of this was the “Draft Environmental Assessment for the Floodplain Strip Adjoining the Boeing Property” (DOE/EADRE-006). The DOE Oak Ridge Operations Office EA assessed a proposal for the sale (to a real estate developer) of about 200 acres of DOE-owned floodplain/wetland land in a narrow strip along the shoreline of a Tennessee Valley Authority (TVA) reservoir. TVA has active management responsibility for the reservoir, has jurisdiction by law over the floodplain property, had previously made a formal request to have the land conveyed to TVA, has relevant expertise not directly available to DOE, and asked informally to be a cooperating agency in the EA. The CAP believed that the document would have benefited greatly by having the TVA as a cooperating partner with the DOE and said as much in comments submitted November 20, 2000 concerning the draft EA. DOE refused to involve TVA as a cooperating agency, probably because DOE was in a hurry to implement its preferred alternative of transferring the land to the developer and feared that TVA’s involvement would hinder its implementation of a decision that essentially had been made before the EA was started. (Civic Group, Oak Ridge, TN - #88.8.30200.B2)

Commitment to Collaborative Process

785. Public Concern: The CEQ Task Force should consider the barriers/challenges to effective collaborative relationships.

LACK OF COMMITMENT TO THE COLLABORATIVE PROCESS

The people involved have to be committed to the collaborative process—including those highest up in the agencies involved. (Individual, Moscow, ID - #8.1.30250.B2)

Inadequate understanding of the responsibilities and requirements associated with collaboration.

Successful collaboration requires considerable “care and feeding” and the ability of initiating agencies to understand and anticipate the needs and concerns of other participants in a collaborative effort. Many agencies are not aware of, or prepared for, the responsibilities and commitments required of the sponsor of a successful collaborative process. (United States Institute for Environmental Conflict Resolution, Tucson, AZ - #574.21.30230.B2)

LACK OF AGENCY COMMITMENT TO PLANNING DIRECTION

Support for collaborative groups must be demonstrated at the outset of project development. County confidence in the NEPA, National Forest Management Act and the Council on Environmental Quality processes [is] not sufficient to provide an impression of a fair and equitable process. The opportunity for meaningful collaborative engagements must be designed and implemented. Frustrating to collaborative groups, agencies lack the ability to commit to planning direction due to political controls. [Some] suggestions: Design collaborative forums for meaningful engagement, provide opportunities for informative dialogs between collaborative groups and experts, recognize groups that represent the county as partners, not NEPA or the Council on Environmental Quality’s requirements, organize community leaders’ breakfasts—building relationships, provide for collaborative on-the-ground meetings, use collaborative forums as team members, not sounding boards, consider assigning county agencies to design and provide public forums, and define specific objectives that recognize equal distribution of pain to avoid an end run. (Placed-Based Group, Sacramento, CA - #522.18.30100.B2)

LACK OF FEDERAL AGENCY INTEREST

The CEQ invited comment on barriers or challenges that have inhibited local government involvement as a cooperating agency in the NEPA process. The principal barrier affecting the City of Oak Ridge has been lack of federal agency interest. The City has never been given an opportunity for involvement in a federal NEPA process, although there have been several NEPA reviews (principally by the U.S. Department of Energy) of proposals in which the City had a strong interest and about which the City could supply expertise (for example, in matters of land use planning and zoning for land being considered for transfer from federal ownership to the private sector. (David Bradshaw, Mayor, City of Oak Ridge, Oak Ridge, TN - #124.2.30260.XX)

LACK OF INCENTIVE FOR AGENCIES TO USE COLLABORATIVE PROCESSES

Inadequate organizational incentives rewarding collaboration and deterring reliance on adversarial unilateral approaches.

For collaborative NEPA approaches to thrive within agencies, appropriate organizational incentives need to be established that reward successful attempts at interagency collaboration and deter reliance on adversarial unilateral approaches, which often result in lawsuits and/or prolonged delays in implementation. (United States Institute for Environmental Conflict Resolution, Tucson, AZ - #574.27.30200.B2)

FAILURE TO MAKE NEPA A PRIORITY

Failure to make NEPA a priority is [a] cause of delay, particularly among U.S. Department of the Interior agencies, which can stall the NEPA process significantly through delayed release of Biological Evaluations or Assessments or similar reports. (Recreational Organization, Lakewood, CO - #19.15.30500.A1)

Teamwork/Cooperation

786. Public Concern: The CEQ Task Force should consider the barriers/challenges to effective collaborative relationships.

FAILURE TO COOPERATE

[B2] "Hot Dog" it and claim all the glory as the Lead agency. (Individual, Washington, DC - #55.2.30200.B2)

We have seen instances where a federal agency involved in a federal agency/state agency decisionmaking process has chosen to develop environmental review documents itself, even though the state with a little NEPA has offered to work jointly with it and must develop its own environmental review documents. Federal agencies must refrain from involvement in such duplicative processes.

Various state representatives we have talked with share a belief that federal agencies, whether for NEPA compliance or otherwise, continue to demonstrate a disregard for state agency expertise or knowledge in a particular topical area. Again, the federal agencies should recognize and take advantage of state processes and expertise which are very likely closer to the project or action under review and the people interested in the project than the corresponding NEPA process. The provisions of 40 Code of Federal Regulations 1506.2 (Elimination of duplication with state and local procedures) and 1506.3 (Adoption) seek this outcome. However, it remains apparent that some federal agencies are still not complying with this long-standing Council on Environmental Quality direction.

In the Memorandum of the Council on Environmental Quality regarding respondents to the August 14, 1981 Federal Register Notice, commenters noted this federal/state duplication and the reluctance of federal agencies to accept analysis of others, including state agencies:

"Of those commenters noting that duplication has not been sufficiently reduced, almost all mention that the problem is the refusal of federal agencies to accept compliance with state environmental requirements as satisfying federal requirements. They complain that they must prepare essentially the same information in two formats to satisfy state and federal procedures."

Again, 40 Code of Federal Regulations 1506.2 addresses this issue. It seems that some federal agencies are reluctant to embrace the direction. There does not appear to be consistency between federal agencies as to the interpretation of NEPA and the Council on Environmental Quality regulations. Inconsistent interpretation and treatment merely results in confusion and, often, unnecessary work. (Other, Washington, DC - #506.35.30200.B2)

FAILURE TO SHARE INFORMATION

What barriers or challenges preclude or hinder the ability to enter into effective collaborative agreements that establish joint-lead or cooperating agency status?

Failure to share information. Failure to put everything on the table by the agency people. Failure of the agency people to accept information from the people who have lived in an area for a long period of time. People who have a lot of knowledge on the functioning of the resources. (Individual, Huachuca City, AZ - #372.24.30200.B2)

FAILURE TO COORDINATE INFORMATION AND ACTIONS

The nature of the NEPA process demands a high level of coordination amongst agencies (United States Department of Agriculture Forest Service, United States Environmental Protection Agency, United States Fish and Wildlife Service, and the United States Bureau of Land Management) that is difficult to achieve—at least in a timely fashion. Poor coordination diminishes the timeliness of the NEPA process, which exacerbates the staleness issue. Extensive coordination is required, but the declines in federal appropriations make the provision of adequate amounts of coordination a very challenging proposition. (Special Use Permittee, Hood River, OR - #528.4.30200.XX)

FAILURE TO ESTABLISH OR ABIDE BY CONCURRENCE POINTS

The following barriers or challenges hinder the formation of effective collaborative agreements: . . . Failure to establish concurrence points or to abide by established concurrence points can create a challenge. (United States Environmental Protection Agency, No Address - #299.27.30200.B2)

LACK OR UNACCEPTANCE OF A GOOD CONFLICT RESOLUTION PROCESS

The following barriers or challenges hinder the formation of effective collaborative agreements: . . . The absence and/or acceptance of a good conflict resolution process can undermine and restrict progress. (United States Environmental Protection Agency, No Address - #299.27.30200.B2)

[There is] under-use of and lack of access to credible conveners and neutral facilitators for interagency negotiations.

In high conflict situations, agencies often may require a credible convener to bring them together to work on a mutual solution. Neutral independent facilitators may also be needed to help agencies negotiate the difficult issues associated with complex collaborative decision-making. Some agencies may not be aware of how to efficiently access these services. In addition, agencies may be reluctant to take advantage of neutral assistance because they equate this assistance with relinquishing control over a decision-making process or perceive it as a failure to solve their own interagency challenges. (United States Institute for Environmental Conflict Resolution, Tucson, AZ - #574.25.30200.B2)

LACK OF PROTOCOLS FOR JOINT FACT-FINDING

Reluctance by lead agencies to engage in joint fact-finding to develop mutually acceptable protocols for collection of scientific data, modeling of alternatives, and analysis of impacts.

Contested scientific information and analysis is frequently an obstacle to collaborative problem solving. Agencies may not want to acknowledge the legitimacy or relevancy of information generated by others, especially if they perceive that they have competing interests. Establishing protocols for joint fact-finding at the outset of a collaborative NEPA process could enable more efficient and more robust analysis upon facts and methodologies. (United States Institute for Environmental Conflict Resolution, Tucson, AZ - #574.23.30200.B2)

FAILURE TO ACCOMMODATE THE NEEDS OF OTHER AGENCIES

[Collaboration is impeded due to the] failure to recognize when it is necessary to accommodate the needs and interests of others in order to accomplish an agency's own mission.

Agencies frequently fail to recognize that, in order to achieve important objectives related to their mission, they must be willing to try to accommodate the needs and interests of other agencies and stakeholders with an influential role in the successful implementation of a project. Agencies often fail to explore opportunities for mutual gains with other agencies or stakeholders. (United States Institute for Environmental Conflict Resolution, Tucson, AZ - #574.15.30200.B2)

Roles/Relationships

787. Public Concern: The CEQ Task Force should consider the barriers/challenges to effective collaborative relationships.

OVERLAPPING OF JURISDICTIONAL RESPONSIBILITIES

One potential barrier to joint state and federal processes involves jurisdictional issues where more than one party may have overlapping responsibilities for the same project. In an example where this barrier has been overcome, Western Area Power Administration (WAPA) has participated with the California Energy Commission (CEC) in joint environmental review processes for new power plants in California, where an applicant has applied for interconnection with Western Area Power Administration's transmission system. Western Area Power Administration has jurisdiction over the interconnection of the power plant to its transmission system. The California Energy Commission has jurisdiction over the construction and operation of the power plant. Western and the California Energy Commission have been able to deal with this jurisdictional issue by defining each agency's roles in an Memorandum of Understanding prepared at the onset of environmental activities. (United States Department of Energy, Washington, DC - #536.13.30210.B2)

LACK OF AGREED UPON ROLES AND RESPONSIBILITIES

A challenge is the need for cooperating agencies to agree on their respective responsibilities and authorities prior to document preparation. (United States Department of Energy, Washington, DC - #536.11.30200.B2)

AGENCY DIFFERENCES IN DECISION AUTHORITY

Difficulties can . . . occur when decision authority differs between agencies, resulting in Forest Service employees working at a different organizational level than their counterparts from other agencies. (United States Department of Agriculture, Washington, DC - #110.5.30210.XX)

LACK OF DECISIONMAKING AUTHORITY

Those involved have to have the authority to make decisions. (Individual, Moscow, ID - #8.1.30250.B2)

FAILURE TO MAKE BINDING DECISIONS

The agencies don't make binding decisions, (but we do) so our hands are tied and then they "blame" their inability to make a real decision at the time of the meeting on some nebulous person somewhere else. I don't believe the joint-lead agency stuff is real, or working currently. (Individual, Pioche, NV - #334.1.30200.B2)

SPECIAL INTERESTS PRECLUDING LEAD AGENCY AUTHORITY

While collaboration with state and local governments is essential to a well-informed decision, a collaborative arrangement can frustrate the purposes of NEPA when special interests are allowed to dominate the process. Perhaps the most blatant example of improper reliance on non-federal agency collaborators is the Supplemental Environmental Impact statement (EIS) process for the Yellowstone and Grand Teton National Parks winter snowmobiling rule. After a much-publicized lawsuit, the Park service agreed to "supplement" its EIS, which had already been ten years in the making. The State of Wyoming, co-plaintiff in the lawsuit, was granted cooperating agency status. Because political pressures were permitted to influence the NEPA process, what in theory should have been an opportunity for inter-

governmental collaboration, quickly collapsed into a situation of the lead agency, the NPS, being substantially left out of the process and not being correctly consulted in the formation of new alternatives. This fact became especially evident when months after the process was initiated the National Park Service planning staff was forced to inquire through a public meeting about the basic tenants of the State's preferred alternative. (Preservation/Conservation Organization, No Address - #498.7.30200.XX)

MISINTERPRETATION ON THE PART OF THE PUBLIC OF COOPERATING AGENCY ROLES

Public perception can also play a role. An agency can be very sensitive about the public's perception of its role as a cooperating agency. The concern tends to be that the public will perceive that the relationship tarnishes the agency's ability to objectively review the project's environmental effects and to protect environmental interests within its purview. (Federal Aviation Administration, No Address - #534.13.30200.B2)

Regarding the matter of "cooperating agency" status, public perception has been a key issue for National Marine Fisheries Service. In several rulemaking instances where other Federal agencies had cooperating agency status in conducting the environmental analysis and in preparing NEPA documents, the public had misinterpreted this to indicate that National Marine Fisheries Service was abrogating certain responsibilities as the regulating agency. This situation suggests that National Marine Fisheries Service needs to explain better to the public what roles and responsibilities cooperating agencies have under NEPA and that all executive branch agencies are encouraged to use cooperating agencies in the NEPA activities. (National Oceanic and Atmospheric Administration, Washington, DC - #637.16.30240.XX)

Inter-/Intra-Agency Conflict

788. Public Concern: The CEQ Task Force should consider the barriers/challenges to effective collaborative relationships.

INTERGOVERNMENTAL RIVALRIES

I do buy into the lead agency concept for getting the review done. This has built into it, however, intragovernmental rivalries (vs. differing agency viewpoints) that can derail the process from its intended path. (Individual, Katy, TX - #188.1.30200.B1)

The most difficult obstacle to overcome in Federal and Inter-Governmental collaboration is classic turf war confrontations between agencies with competing interests or competing constituencies. (Agriculture Industry, Santa Fe, NM - #466.17.30200.XX)

INTER- AND INTRA-AGENCY CONFLICTS

A pervasive problem in NEPA decisionmaking is a lack of coordination or outright conflict between federal agencies and/or between them and state or local agencies. As discussed above, often the science/research arm of an agency is not involved with important management planning endeavors at an early enough stage or is involved only peripherally, which can lead to contradictory recommendations and scientifically and legally vulnerable NEPA decisions. Additionally, intra-agency conflicts can draw-out and confuse NEPA processes and frustrate all parties concerned. While these problems often have more to do with how agencies are structured and funded, we feel that improved coordination within and between agencies is not only possible but necessary to realize the full potential of environmental planning and protection under NEPA. (Preservation/Conservation Organization, Eugene, OR - #94.3.30200.F1)

INTERGOVERNMENTAL COLLABORATION REQUIREMENTS THAT CONFLICT WITH EXISTING STATE PROCESSES

State control of project development: States must have the flexibility to develop projects consistent with their needs. Due to the potential for conflict with unique state processes, CEQ should mandate new prescriptive project development process changes. For example, CEQ should not impose

“intergovernmental collaboration” (a task force recommendation) requirements that could be in conflict with existing state-level project development processes. (Virginia Department of Transportation, No Address - #203.8.30200.XX)

Federal and Intergovernmental Collaboration -There is a critical need for a standardized procedure that requires processing NEPA environmental documents consistently through each state’s environmental quality clearinghouse. In California the Governor’s Office of Planning and Research, State Clearinghouse processes environmental documents. Federal agencies and their cooperating partners are most inconsistent in how they distribute their NEPA environmental documents. Sometimes they use the State Clearinghouse and others they do not. The problem is those of us that work hard to coordinate preliminary project development with these federal agencies and their partners do not see the environmental assessment, categorical exclusions, findings of no significant impact, draft environmental documents or final environmental documents even though we have worked hard on feasibility studies and other preliminary studies. We either are ignored or some other party/branch/unit (sometimes the Department’s environmental units) in our departments receives these documents and does not get them to us. By requiring the routing of environmental documents and their preliminary and feasibility studies, etc., consistently through the state clearinghouse, the documents would have a much better chance of getting to the appropriate intergovernmental reviewing units. (California Department of Transportation, Sacramento, CA - #660.1.30200.XX)

FAILURE OF REGIONAL BRANCHES OF FEDERAL AGENCIES TO COMPLY WITH GUIDANCE FROM WASHINGTON, D.C.

Regional branches of a federal agency are sometimes not consistent with guidance from Washington, D.C. For example, the Los Angeles District of the U.S. Army Corps of Engineers has started analyzing air and water quality impacts—and imposing mitigation measures—related to upland developments even though Washington has indicated that the Corps’ jurisdiction is confined to those impacts affecting the navigable waterways of the U.S. (Port of Long Beach, Long Beach, CA - #69.1.30210.XX)

Regional branches of a federal agency are sometimes not consistent with guidance from Washington, D.C. For example, the Los Angeles District of the U.S. Army Corps of Engineers (ACOE) has required mitigation measures on operational activities of an existing cargo terminal. This appears to contradict the ACOE NEPA guidance, which states “...in order to prevent the unwarranted situation where ‘the Federal tail wags the non-Federal dog’ the scope of analysis would be confined to the environmental effects of only the activity requiring a Corps permit.” (Federal Register Vol. 53, No. 22, page 3121). (Port of Los Angeles, San Pedro, CA - #78.1.30210.XX)

DISAGREEMENT ON STANDARDS AND METHODS OF EFFECTS ANALYSES

Our [Federal Aviation Administration] May 2001 report to Congress . . . identified common causes of poor interagency coordination and cooperation: . . . disagreement on standards and methods of impact analyses . . . (Federal Aviation Administration, No Address - #534.13.30200.B2)

DISAGREEMENT ON THE ADEQUACY OF PROPOSED ENVIRONMENTAL MITIGATION

Our [Federal Aviation Administration] May 2001 report to Congress . . . identified common causes of poor interagency coordination and cooperation: . . . disagreement on the adequacy of proposed environmental mitigation . . . (Federal Aviation Administration, No Address - #534.13.30200.B2)

Single-Agency Dominance

789. Public Concern: The CEQ Task Force should consider the barriers/challenges to effective collaborative relationships.

RELUCTANCE OF AGENCIES TO SHARE CONTROL

Agencies tend to equate collaboration with relinquishing control over decision-making process.

Agencies are often reluctant to pursue interagency or intergovernmental collaboration because they equate it with relinquishing their control over a decision. Agencies may perceive this stance to be appropriate based on their conviction that they cannot legally entrust their decision-making authority and accountability to others. Agencies frequently do not understand that a collaborative process can, in fact, help ensure that their key needs and requirements are satisfactorily addressed before an option under collective considerations can become a truly viable decision. (United States Institute for Environmental Conflict Resolution, Tucson, AZ - #574.14.30200.B2)

INSISTENCE OF THE FEDERAL AGENCY TO MAINTAIN COMPLETE CONTROL OF THE PROCESS

It appears that some of the issues federal, state, local, and tribal agencies need to resolve are:

Turf battles—More often than not, the federal agency that is responsible for a NEPA analysis and documentation makes it difficult or impossible for other agencies to participate effectively in the NEPA process because it wants to maintain complete control of the planning process. Yet successful natural resources management hinges on collaboration. No single agency has all the information and skills needed to resolve a land management issue. More importantly, each agency has a unique perspective on the issue at hand and can help the responsible agency “think outside the box” and identify innovative, scientifically sound solutions for the resources in question. (Recreational/Conservation Organization, Washington, DC - #89.15.30200.B2)

SINGLE AGENCY DOCUMENT PREPARATION

The concepts of joint-lead or cooperating have had mixed success for WisDOT. The Army Corps of Engineers may develop another EIS for the “public interest review” requirements of Section 404, this in spite of their being a cooperating agency. (Wisconsin Department of Transportation, Madison, WI - #214.13.30200.B1)

Participation

790. Public Concern: The CEQ Task Force should consider the barriers/challenges to effective collaborative relationships.

LACK OF FULL PARTICIPATION FROM COOPERATING AGENCIES

I have seen instances where a “cooperating agency” provides too little to the NEPA process either because they do not have the resources or interest in fully participating with the lead agency in the process. As a consequence, the quality of the decision-making process is lessened. Challenges to the NEPA process are increased because of the reduced input from the cooperating agency and the flawed decision-making process. There’s often a question as to who is in charge and responsible for particular components of the NEPA documents and analysis. (Individual, Las Vegas, NV - #359.9.30200.XX)

Regarding barriers that preclude or hinder effective collaboration with other agencies, often a potential cooperating agency is reluctant to participate because it sees no real benefit or minimal benefit accompanied by a drain of resources needed for higher priority tasks. (National Oceanic and Atmospheric Administration, Washington, DC - #637.17.30210.XX)

LIMITED CAPACITY OF LOCAL GOVERNMENTS TO PARTICIPATE

Certain obstacles or challenges may apply when involving Native American tribes or county and local governments as cooperating agencies, including: potential schedule conflicts (e.g., the agency may want faster review times than the tribe or local governments), some tribes or local government units lack technical expertise, and difficulty in obtaining high level approval for key determinations, such as establishing cooperating agency status. (United States Department of Energy, Washington, DC - #536.12.30200.B2)

Barriers appear chiefly in the form of capacity, a limitation that precludes county, state and federal agencies from full participation. Capacity is limited in three general areas: the ability to respond,

confidence and expertise in strategic planning, and support for collaborative efforts. The process itself challenges the capacity of agencies.

County capacity for responsiveness to requests for local involvement is partially limited by the public perception toward the project or the agency proposing the project. It is also limited by the availability of county resources and controlled by the prioritization of those resources. Each county is unique in the availability of resources. [Some] suggestions: Shifts in perceptions will occur through successful collaborative efforts, cooperative relationships between agencies and local governments could be strengthened by frequent, informal meetings such as regular breakfast meetings, increases in technical, scientific and personnel capacities could occur through the use of non-profit organizations to supply the needed resources, CALFED [California Federal Bay-Delta Program] funding or grants to assist the counties in hiring additional staff, establishment of a state or federal resource agencies "loan" program similar to the legislative loan program that would provide agency employees with county experience as they provide expertise to county governments, and encourage the university schools to adopt a rural county for planning assistance as is done for urban counties, inventory county resources and develop an inter-county sharing program, designate a county liaison to coordinate county involvement in state and federal planning, and utilize third party non-profit organizations to 1) obtain federal, state or foundation funding for one or more segments of the planning project, 2) act as facilitator for research, and 3) obtain funding for collaborative participation.

Like county capacity, State and Federal capacity for responsiveness is limited by agency perceptions. The number of simultaneous planning projects also influences the ability to meet timelines and limits agency responsiveness. [Some] suggestions: Shifts in perceptions will occur through successful collaborative efforts, initial improvements in attitude could be made through frequent, informal meetings such as regular breakfast meetings, develop interagency partnerships that complement rather than compete, complete projects on time, and avoid repetitive planning.

Responsiveness: Modifications to the process can similarly improve the ability of rural counties to respond to state and federal land use planning. Consideration of county and agency capacities can do much to alter participation. [Some] suggestions: Consult counties when setting timelines, consider capacities before engaging in multiple projects, provide sufficient lead-time for participation requests, and establish results oriented not process-oriented processes. (Placed-Based Group, Sacramento, CA - #522.12-13,16,19.30700.B2)

REFUSAL TO BECOME A COOPERATING AGENCY DUE TO NEGATIVE EFFECTS ON PUBLIC INVOLVEMENT

Becoming a cooperating agency. Restrictive MOU's [Memorandum of Understanding] would be unacceptable to Uintah County as this would affect the County's ability to utilize public input and the public lands committee. (Cloyd Harrison, et al, Commissioners, Uintah County Board of Commissioners, Vernal, UT - #468.6.30200.XX)

REFUSAL TO ACCEPT COOPERATING AGENCY STATUS

Contrary to the CEQ regulations at [section] 1501.6 some agencies have refused to be cooperating agencies, thereby maintaining or reinforcing an adversarial relationship. (Wisconsin Department of Transportation, Madison, WI - #214.13.30200.B1)

Barrier to the whole process, at least when the Endangered Species Act come into play, is getting the regulatory agencies to the table. We need to have some one from these agencies at the table that has enough authority to make a hard commitment. Currently, they do not have to play at all. All the good work by every one else is to no avail if the regulatory agencies are not in the formula. (Lin Hintze, Chairperson, Custer County Board of Commissioners, Challis, ID - #104.5.30200.B2)

Laws/Acts/Agency Policies and Regulations

791. Public Concern: The CEQ Task Force should consider the barriers/challenges to effective collaborative relationships.

LACK OF CONGRESSIONAL GUIDANCE

The January 30, 2002 Memorandum for the Heads of Federal Agencies from James Connaughton regarding Cooperating Agencies in implementing the procedural requirements of the NEPA, references the same subject from Acting Chair George T. Frampton, Junior's Memorandum of July 28, 1999 because, "Despite previous memoranda and guidance from CEQ, some agencies remain reluctant to engage other Federal and non-federal agencies as a cooperating agency". Both documents refer to 40 Code of Federal Regulations [sections] 1501.6 and 1508.5.

The July 1983 document began by reviewing seeping in a fashion that would identify that "issues of little significance do not consume time and effort"... "reduce unnecessary paperwork and time delays"... identify "issues which are germane to any subsequent action" ... early identification of "significant issues... and avoidance of possible legal challenges."

It suggested that a "review team concept" [interdisciplinary] would benefit "timely and effective preparation of the EIS...and elimination, or at least reduction of, the need for additional environmental studies subsequent to the approval of the EIS."

It went on to say that if the agencies and public followed the Council's guidance, that scoping "may also have the effect of reducing the frequency with which proposed actions are challenged in court on the basis of an inadequate EIS.

Through the techniques identified in this guidance, the lead agency will be able to document that an open public involvement process was conducted, that all reasonable alternatives were identified, that significant issues were identified and non-significant issues eliminated, and that the environmental public involvement requirements of all agencies were met, to the extent possible, in a single "one-stop" process."

So, what's the point? This history goes on and on...history repeating itself, just different players. The Congress has failed in its duty to American citizens to clarify its legislative intent. The Courts have defined for the Council on Environmental Quality nearly every question that history wrought concerning the National Environmental Policy Act, and without Congressional or Presidential aid to clear the air (no pun intended) by revoking or amending conflicting Acts without furthering the gridlock present today, the Court will continue to set policy from the bench rather than judge the constitutionality of policy set by the Congress. (Multiple Use or Land Rights Organization, Rock Springs, WY - #453.20-23.30200.XX)

FEDERAL ADVISORY COMMITTEE ACT

B2. [One] barrier comes to mind almost immediately. [That is] the Federal Advisory Committee Act (FACA). Several of our constituents were very actively involved in the Frank Church Wilderness EIS. All for not when it was determined that a citizen committee could not participate in the process due to FACA. (Lin Hintze, Chairperson, Custer County Board of Commissioners, Challis, ID - #104.4.30200.B2)

Information security while developing a draft environmental impact statement or supplemental EIS prior to public dissemination, can and does pose problems for Cooperating Agencies. For example: Public Law 104-4, Title II - Regulatory Accountability and Reform, Section 202. Statements to accompany significant regulatory actions (2 United States Code. 1532) at section 204(b)

Meetings between state, local, tribal, and federal officers. The Federal Advisory Committee Act (5 United States Code App.) shall not apply to actions in support of intergovernmental communications where—meetings are held exclusively between Federal officials and elected officers of State, local, and tribal governments (or their designated employees with authority to act on their behalf) acting in their official capacities; and such meetings are solely for the purposes of exchanging views, information, or

advice relating to the management or implementation of Federal programs established pursuant to public law that explicitly or inherently share intergovernmental responsibilities or administration.

However, Section 202 (a) In general—Unless otherwise prohibited by law, before promulgating any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any one year, and before promulgating any final rule for which a general notice was published, the agency shall prepare a written statement containing: An identification of the provision of Federal law under which the rule is being promulgated; a qualitative and quantitative assessment of the anticipated costs and benefits of the Federal mandate, including the costs and benefits to State, local, and tribal governments or the private sector, as well as the effect of the Federal mandate on health, safety, and the natural environment and such an assessment shall include—an analysis of the extent to which such costs to State, local, and tribal governments may be paid with Federal financial assistance (or otherwise paid for by the Federal Government); and a description of the extent of the agency's prior consultation with elected representatives (under section 204 of the affected State, local, and tribal governments.)"

Since Title II is inclusive of the above sections, the question could be asked, that if a federal action does not meet or exceed the stated monetary amount in Section 202 (a), combined with promulgating a rule to that effect, are Cooperating Agencies still protected by preemption of the Federal Advisory Committee Act, determined by Section 204 (b) as might be applied under the Council on Environmental Quality in that circumstance. If it is found not to be a requirement, does the same instance preempt State statute?

The interest now generated with Cooperating Agency guidelines has been brought about primarily because of the fact that localized impacts directly having effect on all of the human dimension of the NEPA process have largely been ignored. Especially those processes that cannot quantify with the \$100,000,000 threshold noted above. Case history such as *Uintah County v. Norton* (Civil No. 2:00-CV-0452J) among others, establishes we have a problem that can be alleviated with comments you hopefully will receive under B. 3 from those county participants. (Multiple Use or Land Rights Organization, Rock Springs, WY - #453.30-31.30200.XX)

Inconsistent understanding of Federal Advisory Committee Act requirements.

Many agencies are interested in considering how to pursue more collaborative approaches to the NEPA process. This might involve extending cooperating agency status to other governmental partners, as well as enhancing opportunities for stakeholder participation. However, there is widespread confusion and inconsistent understanding both within and among federal agencies regarding the Federal Advisory committee Act (FACA) requirements in obtaining advice and recommendations from stakeholders. Agencies generally tend to be very risk averse regarding potential Federal Advisory Committee Act violations. Few agencies are familiar with allowable exceptions to Federal Advisory Committee Act, such as an advisory body convened and managed by an independent neutral institution. (United States Institute for Environmental Conflict Resolution, Tucson, AZ - #574.18.30200.B2)

FREEDOM OF INFORMATION ACT AND SUNSHINE LAWS

Freedom of Information Act and "Sunshine Law" concerns about confidential interagency or intergovernmental negotiations of difficult procedural and substantive issues.

Frank and open discussions are often required to negotiate the resolution of challenging procedural and substantive differences among collaborating partners. Parties may need assurances of confidentiality for these conversations to be willing to openly explore potential ideas and solutions. Although the Alternative Dispute Resolution Act of 1996 (ADRA) established provisions for the confidentiality of communications between parties and a neutral in a dispute resolution process occurring in an administrative context, federal agencies frequently have concerns about litigation adversaries obtaining information through the Freedom of Information Act (Alternative Dispute Resolution Act provides an exemption from Freedom of Information Act for certain communications made in a dispute resolution proceeding, but this exemption is not widely understood at many agencies.) An additional challenge for confidentiality is that some state's "Sunshine Laws" potentially make virtually all communications involving state agency staff available to the public. (United States Institute for Environmental Conflict Resolution, Tucson, AZ - #574.17.30200.B2)

LACK OF SPECIFIC INTERGOVERNMENTAL CONSULTATION REQUIREMENTS

Government to government—there is a growing problem involving unspecified and undefined “government to government” consultation requirements that are being orchestrated by the Environmental Protection Agency. This has created confusion for applicants and other agencies and false expectations for Alaska’s Native villages. Much of the problem lies in the title of the program, for example, “government to government”, and the false illusion that such a title creates in the minds of the ill-informed. Some of the villages believe that they have veto authority. An equally large problem is the fact that one cannot get a consistent answer from any Environmental Protection Agency representative as to how the program is supposed to work, for example, they don’t know themselves. (Mining Industry, Anchorage, AK - #645.13.30200.XX)

DISREGARD FOR REGULATIONS REQUIRING LOCAL GOVERNMENT COOPERATION

There is already some good regulatory language requiring the federal government to cooperate with state and local governments in the NEPA process. The problem is the agencies, for the most part, ignore these regulations unless the counties bring them kicking and screaming to the table. Until just a couple of years ago, the agency lawyers were telling the agencies that the counties had no special standing at all.

Many counties are unaware that they have a special place in the planning process that is unique and different than the general public, therefore they don’t take advantage of their status.

Cooperating status has some real drawbacks, especially for the normal rural western county. While they have the expertise, especially in the socio-economic area, to contribute to the planning process, they lack the resources to dedicate to this process.

The agencies are usually very reluctant to grant cooperating agency status to counties, particularly if the planning is being done above the local level. (Willy Hagge, Supervisor, Modoc County Board of Supervisors, No Address - #636.5.30200.XX)

The experiences of Catron County Commission to request partnerships (cooperating agency and joint lead) have been to say the least frustrating since the County signed the Memorandum of Understanding with the Forest Service, region three, ten years ago. The United States Forest Service and the United States Fish and Wildlife Service routinely do not even respond in writing to the County’s written request to be involved in the NEPA process. When the County requested the Council on Environmental Quality to review this routine, even the Council on Environmental Quality did not afford the County the courtesy of a response refer to Catron County Commission letter to Council on Environmental Quality Ellen Athus, sent May 5, 1998).

Since the issuance of the Council on Environmental Quality directive of January 30, 2002, and with the change in federal administration, federal agencies (namely the Forest Service and the Bureau of Land Management) appear to be more open to the County’s requests for Cooperating Agency (CA) status. At this point in time, the Forest Service for the first time states that the County can be a Cooperating Agency. The Bureau of Land Management has also accepted the county’s request to be a Cooperating Agency. The proof is in the pudding.

The potential obstacle for the Catron County Commission now is that these federal agencies are not willing to allow the County on the Interdisciplinary Team (ID Team). They want to confine the County to a “Commenting” role, vs. a “Cooperating Agency” role by limiting the County to only commenting on the analyses, after-the-fact. They are not aware that the County is entitled to be on the Interdisciplinary Team. It is clear in the Council on Environmental Quality Directive Memo (of January 2nd) that Cooperating Agencies should be allowed on the Interdisciplinary Team, and the Cooperating Agency County should be involved in the ID Team. This same Council on Environmental Quality Directive also pointed out that federal agencies should allow Cooperating Agency status to counties for not only environmental impact analyses but also environmental assessments. Hopefully, this clarification will put this debate behind us. For years, the Forest Services position was any request for Cooperating Agency status was only for an EIS, not an Environmental Assessment.

In the same Council on Environmental Quality Directive also put forth expansive criteria for applying to a Cooperating Agency requests. The criteria specified in this directive appear to be the criteria for considering Joint Lead agency request, not the Council on Environmental Quality request. This needs to be corrected because federal field staff can use this misappropriation of criteria to prevent non-federal

agencies from being a Cooperating Agency in the NEPA process. (Carl Livingston, Chairperson, Catron County Board of Commissioners, Reserve, NM - #564.1-2.30200.XX)

Different Regulatory Interpretations

792. Public Concern: The CEQ Task Force should consider the barriers/challenges to effective collaborative relationships.

TOO MANY PLAYERS AND INTERPRETATIONS

Determining specific actions to implement under each of the general questions A through F to streamline the NEPA process is difficult. This difficulty is undoubtedly related to, although not totally dependent upon, the diversity of agencies—and their separate political agendas—that must interact/cooperate by the very structure of the NEPA regulations.

For example, of . . . 500 Coast Guard bridge cases . . . the Coast Guard was the lead agency on 31 percent, while the Federal Highway Administration was lead on 63 percent. The remaining cases involved Department of State, Bureau of Reclamation, Navy, Federal Transportation Administration, and the U.S. Army Corps of Engineers.

Even though inter-agency memoranda of agreement may exist, case processing is obviously slowed by having more “fingers in the pie,” plus separate interpretations of what is “correct.” (Government Employee/Union, Bowie, MD - #17.2.30200.XX)

DIVERGENT PHILOSOPHIES WITH LITTLE INCENTIVE TO REACH AGREEMENT

Divergent philosophies with little incentive to reach agreement can doom cooperation between agencies. The Forest Service is mandated by law (the Multiple-Use Sustained-Yield Act) to manage lands under their jurisdiction for the best multiple use. Agencies such as NMFS or Fish and Wildlife Service are often focused on single-use issues, with no regard for other agencies’ position. This seldom yields progress. (Bob Cope, Commissioner, Lemhi County Board of Commissioners, Salmon, ID - #70.14.30200.B2)

DIFFERENCES IN AGENCY NEPA REGULATIONS AND INTERPRETATION

The Forest Service and other Federal, State, and local agencies can find it difficult to collaborate on decisions and environmental analyses due to several factors. Differences in agency NEPA regulations can cause decision delays when one agency’s process is more streamlined than another. For instance, when two or more agencies have decisions to make on a joint proposal, an agency that has a categorical exclusion for the proposal may be slowed down in its decision-making when the other agencies require documentation in an environmental assessment or an environmental impact statement. Such differences can hinder inter-governmental collaboration. This also occurs when state and federal agencies have different decisionmaking procedures and are yet to cooperate on joint decisions such as road and power-line rights-of-way. (United States Department of Agriculture, Washington, DC - #110.4.30210.XX)

The biggest obstacle in joint lead projects is differing NEPA guidelines between agencies. Other agencies have too many layers of review rather than one focal point of contact. Decide whose NEPA guidelines will be used. (Federal Highway Administration, Wyoming Division, Cheyenne, WY - #83.7.30210.E2)

When federal agencies require a local lead to work through another agency to address NEPA, the process can become cumbersome. For example, in California, in order to get approvals or funding from the Federal Highway Administration (FHA) we work through Caltrans. Sometimes it is not clear that Caltrans is interpreting federal policy accurately and there is no way to verify information or procedures. (Port of Los Angeles, San Pedro, CA - #78.2.30200.XX)

Several Federal agencies operate on a decentralized/regional basis, with each regional office having its own interpretation on regulations. This makes it difficult to achieve an effective collaboration on

projects or programs that are national in scope or involve several different regions. (United States Navy, Washington, DC - #568.12.30200.B3)

DIFFERENCES IN REGIONAL INTERPRETATION OF REQUIREMENTS

Our [Federal Aviation Administration] May 2001 report to Congress . . . identified common causes of poor interagency coordination and cooperation: . . . regional interpretation of requirements that differ from the national level . . . (Federal Aviation Administration, No Address - #534.13.30200.B2)

LACK OF UNDERSTANDING REGARDING THE FLEXIBILITY OF REGULATIONS

Poor internal agency understanding of flexibility available within regulatory constraints and what issues may or may not be negotiable.

Frequently, agencies disagree internally regarding the areas and degree of regulator flexibility they have in pursuing collaborative negotiated solutions. This can result in agency staff working at cross-purposes, as well as confusion for collaborating partners. (United States Institute for Environmental Conflict, Tucson, AZ - #574.19.30200.B2)

LACK OF CONSISTENCY IN NEPA IMPLEMENTATION

Different standards: Federal agencies implement NEPA inconsistently, or use different processes and standards. Agencies sometimes refuse to recognize NEPA processes of other federal agencies, leading to conflicts between agencies within the federal system, and usually resulting in delays in decisionmaking.

Recommendation: We suggest considering at least using the same standards and processes for similar environmental issues, such as surface use evaluations, water quality impacts, air quality impacts, etc. (Office of the Governor State of North Dakota, Bismarck, ND - #635.2.30210.XX)

LACK OF CONSISTENCY IN LOCAL PLANNING

Criteria requiring consistency with local planning to the greatest extent possible have no meaning under the current Council on Environmental Quality's regulations. Environmental Assessment authors simply state that they are "consistent to the greatest extent possible" without consultation or efforts to resolve consistency issues. Local government has little recourse when federal agency planners ignore consistency issues. (Individual, Kanab, UT - #537.3.30210.XX)

LACK OF AGENCY UNDERSTANDING REGARDING THE ROLES AND EFFECTS OF NEPA ANALYSIS

We have noticed that agencies, whether they are state or federal, are reluctant to participate because of a lack of understanding about how they could be affected by a project or proposal subject to NEPA. It has been an observation that the criteria between agencies that may assume the lead role and how cooperating agencies or joint-lead arrangements function is not always clear. It would be helpful to at least provide consistent guidance, then follow-up with a Memorandum of Understandings so that each participating party is clear about their roles, responsibilities and how the decisions of a given NEPA analysis may or may not affect them. (Oil, Natural Gas, or Coal Industry, Denver, CO - #598.8.30200.XX)

Communication

793. Public Concern: The CEQ Task Force should consider the barriers/challenges to effective collaborative relationships.

COMMUNICATION BARRIERS

The following barriers or challenges hinder the formation of effective collaborative agreements: . . . Communication barriers are significant. For example, agencies apply different definitions to the same terms, promoting varied expectations. (United States Environmental Protection Agency, No Address - #299.27.30200.B2)

Open communication must be negotiating rule number one. All employees of reviewing agencies must be allowed to put their views in writing, on the record. Some agencies are unwilling to cooperate with

certain groups, do not readily share information, and do not publicize information, meetings or actions. The lack of openness has created an atmosphere of distrust, with the NEPA process often being tied up in protests and lawsuits, which does not benefit anyone. Agencies must be required to cooperate with all groups. (Agriculture Industry, Santa Fe, NM - #466.17.30200.XX)

FAILURE OF CONSULTING AGENCIES TO MAKE THEIR VIEWS KNOWN EARLY IN THE PROCESS

Consulting agencies need to make their views known on significant issues earlier in the process. Increasingly, consulting agencies are weighing in at the eleventh hour on issues that should have been addressed earlier in their comments on the draft environmental analysis. In some cases, the cause is lack of communication and coordination within the agency—or personal agendas—resulting in a “changed course” for the agency at the last minute. Other times, the agency will not make its views clearly known until the end of the process even though it has been involved from the very beginning. (Recreational Organization, Lakewood, CO - #19.15.30500.A1)

INADEQUATE REVIEW OF INTERAGENCY COMMENTS

Inadequate review of inter-agency comments—often the responsible federal agency processes the solicited and received comments of state wildlife agencies and other federal agencies in the same manner it processes comments from the general public. Wildlife is entrusted to the States, except for species that are federally protected by such laws as the Migratory Bird Treaty Act of 1918 and the Endangered Species Act of 1973. It stands to reason that federal agencies charged with the preparation of NEPA documents involving wildlife and their habitats would collaborate and cooperate with the States and other federal agencies that are responsible for protecting wildlife and their habitats. (Recreational/Conservation Organization, Washington, DC - #89.16.30260.B2)

Public Involvement

794. Public Concern: The CEQ Task Force should consider the barriers/challenges to effective collaborative relationships.

LACK OF PARTICIPATION IN THE SCOPING PROCESS

Our [Federal Aviation Administration] May 2001 report to Congress . . . identified common causes of poor interagency coordination and cooperation: . . . lack of participation in scoping at the beginning of an EIS . . . (Federal Aviation Administration, No Address - #534.13.30200.B2)

LACK OF CONTINUED INTERACTION BY ALL STAKEHOLDERS TO ADDRESS CONCERNS

A . . . challenge is that continual interaction is necessary as the NEPA document is being prepared so that issues and concerns can be addressed in a timely manner and that issues that cannot be resolved by staff are elevated to the appropriate level of management for resolution. (United States Department of Energy, Washington, DC - #536.11.30200.B2)

DISREGARD FOR COMMENT PERIODS

Comment periods are ignored by cooperating agencies, which negatively impacts the overall analysis of public comments. In the case of Mount Ashland, comments provided by cooperating federal agencies - outside the official comment period—have led to extensive, additional analysis, and the United States Department of Agriculture Forest Service’s decision to require a revised draft environmental impact statement. (Special Use Permittee, Hood River, OR - #528.4.30200.XX)

FATIGUE OF PARTICIPANTS DUE TO EXCESSIVE PUBLIC INVOLVEMENT AND COLLABORATION

In general, collaboration is problematic to say the least. Thought it’s in vogue today, by its very nature it’s time consuming.

An acute problem with collaboration is there are no guarantees. Many individuals, interest groups, and other parties suffer from “participatory fatigue” due to excessive public involvement and collaboration and this is exacerbated when the final product is never implemented. (Timber or Wood Products Industry, Portland, OR - #454.18.30000.B2)

Analysis/Documentation Demands

795. Public Concern: The CEQ Task Force should consider the barriers/challenges to effective collaborative relationships.

VOLUME OF ENVIRONMENTAL DOCUMENTS

Perhaps the largest barrier to effective NEPA implementation by federal agencies is the sheer volume of environmental documents currently prepared. The result is a dilution of a meaningful application of this landmark act towards federal decisionmaking. (Other, Washington, DC - #506.33.30200.B2)

DUPLICATION OF STATE AND FEDERAL ANALYSIS REQUIREMENTS

If the state working in partnership with a federal agency has a little NEPA, the agency ought to place additional reliance on the state environmental analysis and review processes. Such state processes and programs are tailored for public involvement in the development of environmental analysis documents. Additional or redundant federal processes only serve to confuse the public and waste time and very limited federal resources. More diligent participation and cooperation on the part of the federal agencies would strengthen the joint-lead and cooperative relationships between state and federal agencies. (Wisconsin Department of Natural Resources, Madison, WI - #458.7.30100.B1)

CONTINUOUS REQUESTS FOR NEW INFORMATION AND ANALYSIS

Our [Federal Aviation Administration] May 2001 report to Congress . . . identified common causes of poor interagency coordination and cooperation: . . . continuous requests for new information and analyses as an EIS progresses . . . (Federal Aviation Administration, No Address - #534.13.30200.B2)

ABSENCE OF REQUIRED LIMITATIONS ON ADDITIONAL STUDIES

Cooperating agencies should be required to justify the need for any additional studies, particularly if the agency does not have the funding or personnel to carry out the study itself. The absence of such a requirement allows a cooperating agency to unreasonably delay the NEPA process and consequently the proposed project. (Oil, Natural Gas, or Coal Industry, No Address - #634.3.30100.B1)

OVER-EMPHASIS ON NEPA DOCUMENTATION AND LITIGATION PROTECTION

[There is an] over-emphasis on NEPA documentation and litigation protection.

Agencies tend to view NEPA for the most part as a set of procedural requirements with which they must comply in order to avoid litigation. Unfortunately, this primary focus on documentation and litigation protection overwhelms the likelihood that agencies will see the opportunity to use NEPA as an effective framework for collaborative planning and decision-making. (United States Institute for Environmental Conflict Resolution, Tucson, AZ - #574.20.30200.B2)

REQUIREMENT TO DOCUMENT ALTERNATIVES TO PROPOSED ACTION IN AN EIS OR EA PRIOR TO A DECISION

The requirement that alternatives to proposed actions and their effects be documented in an environmental impact statement and environmental assessment prior to a decision does not facilitate a collaborative process between agencies or with other interests. (United States Department of Agriculture, Washington, DC - #110.6.30200.XX)

INABILITY OF FEDERAL AGENCIES TO PROVIDE GUIDANCE ON INCORPORATING STATE OR LOCAL REQUIREMENTS INTO JOINT DOCUMENTS

Federal agencies sometimes cannot provide guidance on incorporating state or local requirements into joint documents. For example, the U.S. Army Corps of Engineers does not have guidance documents and the Federal Highway Administration uses the California Department of Transportation's (Caltrans) guidance documents. In such cases, if the federal project manager is experienced then the local agency can rely on his or her expertise, but inexperienced project managers usually cannot provide clear guidance. (Port of Long Beach, Long Beach, CA - #69.2.30230.XX)

Trust

796. Public Concern: The CEQ Task Force should consider the barriers/challenges to effective collaborative relationships.

LACK OF TRUST

The following barriers or challenges hinder the formation of effective collaborative agreements: . . . The mutual “trust” factor is significant. Particularly given limited resource concerns, agencies will be less inclined to collaborate or partner with agencies with which trusting and respectful relationships have not been developed. (United States Environmental Protection Agency, No Address - #299.27.30200.B2)

Lack of trust is a major barrier. An agency doesn’t build trust overnight. There has to be the commitment to invest in the long-term process of trust building both with the agencies involved and among the interested parties. (Individual, Moscow, ID - #8.1.30250.B2)

DECISIONS BASED ON POLITICS RATHER THAN SCIENCE

Agencies are sometimes at odds over issues and the process breaks down due to conflicts. An example in the Pacific Northwest [is the] United States Forest Service and National Marine Fisheries Services consultations. We have found decisions being made by the cooperative effort based on their political clout and not on either agencies’ data or science. What they call cooperation appears to mostly be mere “duty” and employees with agendas at the local levels “swing” the deal they believe in rather than making a fair and honest assessment of the issue. (Domestic Livestock Industry, La Grande, OR - #496.18.30200.B1)

EGOS AND HIDDEN AGENDAS

The primary barriers or challenges that preclude or hinder the ability to enter into effective collaborative agreements that establish joint-lead or cooperating agency status are egos, hidden agenda, and lack of trust. (NEPA Professional or Association - Private Sector, Tucson, AZ - #82.12.30200.A1)

The cooperating agency comes to the table with their own agenda (e.g. politics gets involved). The representative staff is disruptive, not good in team situations, and exhibits suspicious behavior during collaboration meetings. The lead agency can create barriers by failing to follow an “open” NEPA process and making it appear more of an exercise with the final objective already set. (Individual, Fort Collins, CO - #116.1.30200.B2)

AGENCY BIAS REGARDING PROJECTS

The greatest challenge to effective joint NEPA relationships seems to be when one agency/government is an advocate for a project and attempts to push or speed the proposal in a way that limits public participation or impairs the process. In Montana, the Bureau of Land Management and state Department of Environmental Quality completed a NEPA analysis for coal bed methane development. The Bureau of Land Management clearly wanted to push the proposal more than the Council on Environmental Quality, and as a result issues a poorly analyzed and poorly considered draft document. This wasted not only agency time and money (which is in fact the public’s), but [also] the public’s direct time and money. Agencies should not be advocates, which becomes particularly apparent when there [are] joint agency relationships. (Preservation/Conservation Organization, Bozeman, MT - #662.10.30200.XX)

Personnel/Education

797. Public Concern: The CEQ Task Force should consider the barriers/challenges to effective collaborative relationships.

LACK OF SUFFICIENT STAFF

Personnel issues - The authority to enter into and to make decisions under such agreements is not always delegated to an appropriate level. Thus, for the sake of consistency and time efficiency, each agency should send the same person(s) to each collaborative meeting and these representatives should have the authority to make on-the-spot decisions. Yet for many agencies that requires hiring more individuals because they currently lack a sufficient staff to accommodate the time demands of collaborative projects. Moreover, agency heads need to consistently communicate their desire to conduct business in this manner to their employees. (Recreational/Conservation Organization, Washington, DC - #89.17.30230.B2)

PERSONNEL CHANGES

Unanticipated delays can occur, for example, during an EIS process, which can extend over a period of several years, personnel changes at cooperating agencies can undermine previously negotiated impact assessment methodologies and mitigation strategies, and result in substantial project delays while the new staff learns about the project, the Board's process, and the scope of the Board's jurisdiction. (Surface Transportation Board, No Address - #519.17.30230.B2)

POOR ATTITUDES OF AGENCY EMPLOYEES

Most of the barriers or challenges precluding or hindering collaborative agreements exist within the agency. Often, a federal employee is the root of the problem and may be the result of an unwillingness to share information, contrasting ideological philosophies, or complete disdain for the activity or use for which the agency is proposing. (Domestic Livestock Industry, La Grande, OR - #496.21.30200.B2)

[A barrier is] lackluster and ambivalent staff that are not educated in the importance of fostering partnerships and using ready and available human and research resources. It appears that they are using conflict techniques that alienate partnerships with attitudes/policies of uncooperative and difficult to understand reasons that are destined to failure.

The Chain of command makes this situation even more pronounced. (Individual, Johnson City, TN - #631.9.30200.B2)

LACK OF EDUCATION ON CURRENT SCIENTIFIC DEVELOPMENTS

Meaningful contributions require education on current scientific developments. [Some] suggestions: Increase, validate and provide credibility for public participation, translate then incorporate emotional language, provide education as a key support for collaborative processes, and focus collaborative forums on timely elements throughout the planning process, rather than the overall project at one setting. (Placed-Based Group, Sacramento, CA - #522.21.30200.B2)

INADEQUATE SUPPORT FROM AGENCY MANAGEMENT TO RESOLVE ISSUES

A . . . challenge is that management of both agencies must be committed to address the issues and concerns in need of resolution. (United States Department of Energy, Washington, DC - #536.11.30200.B2)

Inadequate support and commitment from agency officials for pursuing collaboratively derived solutions.

Collaborative efforts are often initiated without adequate support and commitment from higher-level agency officials. This may mean that the required resources may not be made available. It may also mean that a negotiated solution cannot be implemented because officials were not supportive of the collaborative approach that was used or because they are unwilling to go along with the solution that was negotiated. Failure to follow through on perceived commitments erode trust and confidence in

pursuing collaborative efforts. (United States Institute for Environmental Conflict Resolution, Tucson, AZ - #574.26.30200.B2)

Timeframes

798. Public Concern: The CEQ Task Force should consider the barriers/challenges to effective collaborative relationships.

UNREALISTIC TIMEFRAMES

One of the obstacles to effective communication “that is, information out and substantive feedback received back in” can be the participants setting an unrealistic timeframe for the process. It is understandable that simultaneous completion of certain parts of the process will occur, but a reasonable amount of time then needs to be given to the cooperating agencies to digest the documents produced and provide quality responses to that information. Reasonable deviations from the established timetable may need to be accommodated at times, in the interest of encouraging substantive, informed input from the cooperators. (Mark A. Semlek, Chairperson, Crook County Board of Commissioners, et al, Sundance, WY - #73.8.30200.XX)

FAILURE OF ALL AGENCIES TO AGREE ON TIMELINES

A . . . challenge is ensuring that the parties agree on the schedule to complete the NEPA document. (United States Department of Energy, Washington, DC - #536.11.30200.B2)

FAILURE TO SUBSCRIBE TO PROJECT SCHEDULES

Delays can be attributed to the lead agency’s failure to require consulting agencies or entities to subscribe to project schedules for scoping, comment periods, and other steps in the process. These trends undermine the NEPA process and cause unnecessary delays. (Recreational Organization, Lakewood, CO - #19.15.30500.A1)

INORDINATE TIME SPENT ON STRATEGIC PLANNING

State and particularly federal agencies are caught in a seemingly endless round of strategic planning. Inconsistencies, uncertainties, short-term longevity and political connections make it difficult for county investments in local participation but increase the county impact. Long-term strategic plans lose credibility when dependent on short-term funding. [Some] suggestions: Agency recognition of county authority, consider county general plans in strategic planning, integrate public and private strategic plans, develop a master strategic plan to follow it, designate an agency liaison to counties, and agencies must become an advocate for their plans regardless of political ramifications. (Placed-Based Group, Sacramento, CA - #522.17.30200.B2)

LENGTH OF INTERNAL REVIEW OF ENVIRONMENTAL DOCUMENTS

In contrast to some larger agencies, Section of Environmental Analysis’s internal review process for working draft environmental documents is relatively streamlined and can occur quite quickly, particularly in cases with short statutory deadlines such as railroad mergers. Conflicts have occurred in the past where the document review periods by cooperating agencies take longer than that of Section of Environmental Analysis due to a more hierarchal review and concurrence process at some larger cooperating agencies. Section of Environmental Analysis has been successful in reducing conflicts by developing agreements with the cooperating agencies whereby reviews take place at field or regional offices of that particular agency. These field and regional office staff are frequently more familiar with the technical issues and appropriately qualified to conduct document reviews. Although these agreements can be difficult to obtain, they frequently avoid potential project delays that may be associated with additional reviews that might otherwise occur at the headquarters level. (Surface Transportation Board, No Address - #519.16.30210.B2)

LATE IDENTIFICATION OF PROBLEMS AND DISPUTES

Our [Federal Aviation Administration] May 2001 report to Congress . . . identified common causes of poor interagency coordination and cooperation: . . . identification of major problems and disputes late in the EIS process . . . (Federal Aviation Administration, No Address - #534.13.30200.B2)

RESPONSE TIMELINES

There . . . exists an ongoing issue of timelines of response in working with Caltrans [as a barrier to effective collaboration]. Caltrans already requires six months for processing of a simple exclusion. There needs to be additional oversight of these designees or more specific written guidance. (Port of Los Angeles, San Pedro, CA - #78.2.30200.XX)

FAILURE TO COMMENT WITHIN TIMEFRAMES

Our [Federal Aviation Administration] May 2001 report to Congress . . . identified common causes of poor interagency coordination and cooperation: . . . delay in commenting within prescribed EIS commenting timeframes . . . (Federal Aviation Administration, No Address - #534.13.30200.B2)

Funding

799. Public Concern: The CEQ Task Force should consider the barriers/challenges to effective collaborative relationships.

LIMITED RESOURCES

The following barriers or challenges hinder the formation of effective collaborative agreements: . . . Limited resources (e.g., staffing, travel dollars) usually present immediate hindrances and the lead agency cannot or does not usually agree to fund these shortfalls. (United States Environmental Protection Agency, No Address - #299.27.30200.B2)

Limited finances and staffing prevent state agencies from participating effectively as a cooperating or joint lead agency for review of proposed federal actions. Resources expended by state or local agencies to cooperate with federal partners essentially results in the cooperating agency having less ability to carry out their own mission. We recommend that funding be earmarked within the budget of the federal agency proposing an action and used to enable the appropriate state and/or local agencies to participate in the cooperation desired by the Council on Environmental Quality. (Michigan Department of Natural Resources, Lansing, MI - #563.12.30000.XX)

Different agencies have different levels of funding for their NEPA activities. This leads to delays in the process, especially if input from a given agency is critical to the analyses. (Oil, Natural Gas, or Coal Industry, No Address - #634.3.30100.B1)

Another critical barrier is often a lack of adequate funds/resources to participate in the EIS review process according to the schedule desired by the applicant or the lead agency. (Federal Aviation Administration, No Address - #534.13.30200.B2)

States need funding if they are to be expected to continue to prepare federal NEPA documents. Funding should be earmarked and provided to appropriate state agencies as part of the overall federal project budget. (Wisconsin Department of Natural Resources, Madison, WI - #458.12.30220.B2)

Technology and Information Management

800. Public Concern: The CEQ Task Force should consider the barriers/challenges to effective collaborative relationships.

DIFFERENCES IN TECHNOLOGICAL CAPABILITIES

Information Management, and Information Security Improvements in technology have allowed greater information to be available to analyze the impacts of proposed projects. Obtaining access to it has become more critical than ever. Frequently local municipalities have information at a level of detail that federal agencies with their broad geographic reach cannot achieve. Because local municipalities consistently interact with its resources, they must develop detailed information about them. For example, Contra Costa County is completing a countywide geographic information system (GIS). The Geographic Information System is at a level of detail to allow for specific analysis of a variety of environmental impacts. The California Department of Fish and Game has a list of all known sitings of red-legged frogs (a federally threatened species). The United States Fish and Wildlife Service maintains a database of known wetlands (in which the frogs may reside.) But Contra Costa County currently has the best, field verified data on red-legged frog habitat within the County. The Department has developed this information in preparation for negotiating long-term maintenance agreements with a variety of regulatory agencies (both State and Federal). Federal agencies should not hesitate to coordinate with local agencies to tap into unique sources of information. (Contra Costa County Public Works Department, Martinez, CA - #540.1.30200.XX)

DIFFERENCES IN COMPUTER CAPABILITIES

Dependent upon their individual computer capabilities cooperators [in a joint lead or cooperating agency relationship] can at times struggle with processing and printing out the large volume of information that the cooperators are asked to review and offer comments upon. If those same cooperators have any problems with their email capabilities, they could potentially miss important information and not be aware of the omission for some time. Lead-agency personnel may be forced to extend their timelines unnecessarily because of delays in their receipt of cooperator input. In the Black Hills, there are many local and state entities participating as cooperators—the logistics of coordinating this process are challenging, to say the least. (Mark A. Semlek, Chairperson, Crook County Board of Commissioners, et al, Sundance, WY - #73.6.30200.XX)

FAILURE TO USE AGREED UPON ENVIRONMENTAL/ECOLOGICAL DATA

The following barriers or challenges hinder the formation of effective collaborative agreements: . . . Failure to use agreed-upon environmental/ecological data (e.g. GIS) or lack of agreement on modeling techniques hinder collaborative agreements. (United States Environmental Protection Agency, No Address - #299.27.30200.B2)

Examples of Ineffective Collaborative Relationships

801. Public Concern: The CEQ Task Force should consider examples of ineffective collaborative relationships.

NATIONAL MARINE FISHERIES SERVICE

To define ineffective interagency relationships, one merely needs to examine any process in which the National Marine Fisheries Service becomes involved. Hidden agendas and alternative goals on the part of this agency rarely fail to lead to gridlock. Often, new barriers and concerns are raised after the consultation process, forcing a recurrent need to discover a simple cylindrical transportation device. (Bob Cope, Commissioner, Lemhi County Board of Commissioners, Salmon, ID - #70.13.30200.B1)

DEPARTMENT OF NATURAL RESOURCES AND THE U.S. FISH AND WILDLIFE SERVICE

At the time that the EIS for the DNR HCP was written (example #3), there was a general lack of understanding by the Services as to how joint-lead efforts could be fashioned. This resulted in much wasted time while the logistics were sorted out.

Example 3:

The third example includes a joint NEPA/SEPA EIS that was prepared for a multi-species HCP covering DNR's state trust lands. For purposes of writing this document, DNR shared co-lead agency status with the USFWS.

Although the EIS for the HCP was written about five years ago, this seems to still be the case with the EIS that will be written in the near future under the Forest Practices Rules. (Washington State Department of Natural Resources, Olympia, WA - #128.5.30300.B3)

FOREST SERVICE AND FEDERAL ENERGY REGULATORY COMMISSION

An example of a bad cooperating agency is a hydroelectric dam re-licensing project on Forest Service land in which FERC is documenting and considering certain economic information that the Forest Service is prohibited from considering. The Forest Service has an obligation under the Northwest Forest Plan to protect aquatic resources under its jurisdiction, but FERC is just interested in maintaining the status quo. (Preservation/Conservation Organization, Eugene, OR - #106.12.30210.B2)

WARM CREEK/CLEARWATER CREEK HYDROELECTRIC PROJECT AND GRAYS HARBOR LATERAL PROJECT

The Warm Creek/Clearwater Creek hydroelectric project (example #1) provides an example of barriers to entering into a collaborative agreement. During this project, DNR commented on a draft EIS prepared by FERC, stating that the project was in violation of an HCP that was in place for the proposed construction site. Although a final EIS was prepared that acknowledged this conflict, the recommendation was to proceed with the preferred alternative and begin construction as proposed. The result of FERC not working with the state to identify possible alternatives to the proposal included significant delays and expense of considerable time and resources by Tribal, State, and Local governments. Additionally, because the FERC requirements and the previously existing requirements entered into with the USFWS are not compatible, DNR is caught in the middle of conflicting requirements from two federal agencies. This project has taken nearly a decade to resolve and may be subject to future litigation due to these issues not being adequately addressed to date.

The first example includes a comparison of Environmental Impact Statements (EISs) prepared under NEPA by the Federal Energy Regulation Commission (FERC). The first EIS was prepared for a hydroelectric dam on Warm Creek and Clearwater Creek that would be constructed on DNR state trust lands. The proposed site includes old growth forest that is covered by a Habitat Conservation Plan (HCP) and is designated as a spotted owl nest patch. This HCP is a binding legal agreement between the state and the USFWS. Additionally, the site included cultural resources issues and steep unstable slopes that are protected under both the HCP and state Forest Practices Rules. (Washington State Department of Natural Resources, Olympia, WA - #128.4.30200.B2)

ANIMAS-LAPLATA PROJECT

Almost three years ago, in its infinite wisdom, the BOR [Bureau of Reclamation] determined that the Ute Indians were capable of leading an objective, dispassionate "final" EIS for the A-LP [Animas-LaPlata Project], a controversial water development project with the purported purpose of directly and primarily benefiting the Colorado Ute tribes by settling their claims to water under the Winters doctrine and allowing for sweetheart 638 tribal contracts to be awarded for the construction of the A-LP itself. The BOR's decision to name the Utes as co-lead in the EIS process was, in fact, ill-considered, since the Utes had previously and publicly pledged allegiance to a particular structural alternative for the A-LP—adamantly stating that nothing less than a dam and a Ridges Basin Reservoir would be sufficient to satisfy their claims—claims which continue to be disrupted and challenged in Colorado Water Court. The A-LP is not an Indian only project, and the BOR gave no consideration whatsoever to the need for fairness and impartiality in casting the role of co-lead. Instead, the BOR sanctioned a clear cut conflict of interest by selecting the Utes to act as primary players in development of the EIS, ensuring that the

required environmental analyses would be self-fulfilling—the predestined products of warped science and rank politicization.

When the Department of the Interior (DOI) misguidedly and inappropriately invoked the Indian Self Determination Act (ISDA), the Utes, with their attorneys and hand-picked, self-service consultants and contractors were paid federal dollars to write their own settlement ticket by controlling the scope, the content, and ultimately the outcome of the “Final Supplemental Environmental Impact Statement” for the A-LP. Nowhere does the ISDA envision empowering one tribe—with an exclusive vested interest in a particular outcome—to take the lead in conducting and directing NEPA analyses in such a manner as to jeopardize the real interests of various other stakeholders and the public at large. Nowhere does the ISDA anticipate or justify the insane interpretation that an affected Indian tribe should be invited to decide how much the public owes it and the manner in which that debt should be satisfied. Is it standard procedure for the federal government to permit a tribal entity to lead in the NEPA preparation of an Environmental Impact Statement for a proposed action designed primarily for their own benefit, after issuing public pronouncements and declarations indicating strong bias toward a preconceived outcome? Of course not! Why, then, was the BOR/DOI permitted to license the Utes to manage the latest A-LP EIS? And why were the BOR and the Utes allowed to spend some 13 million taxpayer dollars to buy the data and answers they had to have in an A-LP EIS?

Many of the fatal flaws in the A-LP EIS are firmly rooted in the federal government’s deep-seated, codependent relationship with the Indians and the BOR’s motivation to justify construction of a massive billion-dollar reclamation project for which there is no legitimate purpose or need. Perhaps a General Accounting Office investigation will expose the degree to which such a conflicted tribal interest and the BOR’s machinations have been inextricably [mixed], and a disinterested case study of the A-LP by the Council’s NEPATF could be useful first step in uncovering the truth about this wasteful project. (Individual, Farmington, NM - #91.4.30200.XX)

COORDINATED ACTIVITY PLAN DRAFT EIS OF 2000

Bureau of Land Management, Jack Morrow Hills - Coordinated Activity Plan Draft EIS of 2000 as a tiered component of the Green River Resource Management Plan-ROD of 1997 in relation to a later Supplemental EIS of former Secretary of the Interior Bruce Babbitt which appeared to be the primary reason behind the local interest in 40 C.F.R. [section]1501.6 - Cooperating agencies; [section]1506.2 - Elimination of duplication with State and local procedures; and [section] 1508.5 - Cooperating agency to a three county area of Wyoming.

Former Secretary of Interior Bruce Babbitt . . . initiated an advisory committee (Green River Basin Advisory Committee) in 1996 for streamlining a process that was agreed to by the participating interests of the Green River Basin Advisory Committee. However, the Del never followed through. This area is a prime history of what could have worked, what hasn’t worked, and is presently ongoing—State Of Wyoming. Office of Federal Lands Policy—Fremont, Sublette and Sweetwater Counties, Wyoming—Sweetwater County Conservation District. (Multiple Use or Land Rights Organization, Rock Springs, WY - #453.32.30100.B1)

CATRON COUNTY CASE STUDY

Catron County Case Study: This case study would examine the various NEPA experiences to determine the intergovernmental processes and procedures at work; the areas where collaboration was not present and why; the reasons for federal agency rejection/resistance to allow County coordinated planning status in the NEPA process; identify lessons learned; and, identify resulting alternatives for improving intergovernmental collaborative NEPA planning between Catron County and the relevant federal agencies (notably, the Forest Service, Bureau of Land Management and Fish and Wildlife Service).

Because of the notoriety of Catron County and the large federal presence in the region, a case study could be quite instructive for both federal agencies and non-federal governments. For over twelve years, the County has been persistent over tens in its efforts to obtain coordinated planning status in the NEPA process. The documentation is substantial for a case study. Furthermore, there is a willingness on the part of County and the various federal agencies to discuss the obstacles and opportunities for improving the NEPA process.

The case study could start with the early 1990s and expand to the year 2002. It could focus on one resource issue like the Mexican Spotted Owl, or, it could take all the resource issues that were NEPA

driven and examine the impediments to successful intergovernmental collaboration. The case study could examine the significant issues of the local communities as well as federal agency documentation of significant issues; examine the alternatives, the impacts and the mitigation efforts. More importantly, the case study could look at the efficacy of communication and determine ways to improve this inherently intergovernmental process. (Carl Livingston, Chairperson, Catron County Board of Commissioners, Reserve, NM - #564.10.30200.XX)

FUND FOR ANIMALS VERSUS JAMIE CLARK

Concerning intergovernmental collaboration, we offer a case study relating to cooperating agency status. The case is *Fund for Animals v. Jamie Clark*, 27 F. Supp.2d 8 (D.D.C.). Without management, the bison herd at Grand Teton National Park has increased its numbers from about 25 in the early 1980s to approximately 435 in 1998, and the size of the herd grows at a rate of about 16 percent annually. Now a free-ranging herd in the Jackson Valley, the bison in 1985 discovered the elk feeding program at the nearby National Elk Refuge and now annually range onto the Elk Refuge when natural forage is exhausted in winter. The bison have also begun to range onto the nearby Bridger-Teton National Forest. Three jurisdictions are involved: the Park Service on park land, the Fish and Wildlife Service on the refuge, and the Wyoming Department of Fish and Game which possesses primary authority to regulate hunting on the Bridger-Teton.

In the early 1990s, National Park Service and Fish and Wildlife Services, as lead agencies, began preparation of a Long Term Bison Management Plan and Environmental Assessment. Wildlife Fish and Game and the Forest Service were invited to participate as cooperating agencies, and they accepted the invitation. The Long Term Plan eventually produced called for public hunting of bison on the Elk Refuge with hunters licensed by the State and hunting on the Bridger-Teton to reduce the size of the bison herd and maintain it well below the then-existing level. An animal protection organization sued to enjoin public hunting, and the district court subsequently did so, its injunction extending not only to the refuge, but also to the Bridger-Teton where hunting is subject to state jurisdiction. In one of the less thoughtful NEPA rulings of 1998, the district court (Urbina, J.) directed that the Forest Service close the Bridger-Teton to bison hunting—not because prior approval of any federal agency is necessary for the state to license the hunting of bison on the forest but because the state had become “intimately involved in the discussion and planning of the hunt” and thus “cannot now claim to have no responsibility under NEPA.”

Of course, the whole point of being a cooperating agency is to become “intimately involved” in NEPA planning, but the district court invoked cooperating agency status as a basis to enjoin the state cooperator. On the strength of the district court’s ruling, the Association has cautioned state government members to participate as cooperating agencies in NEPA analysis only for the most compelling of reasons. (Other, Washington, DC - #506.17.30500.XX)

Training Emphasis

Summary

This section includes the following topics: Training General, Training in Team Building and Cooperation, Training in Leadership and Roles, Training in the Importance of Public Involvement, and Training in Other Areas.

Training General – Suggestions regarding general areas of training include the use of NEPA for collaborative planning, the concept of joint-lead and cooperating agency status, and examples of successful collaborative NEPA processes. A few respondents, however, stress that experience will benefit personnel more than actual training. One elected official remarks, “Training may help, but it [is] certainly no panacea in regard to the current set of difficulties. Communication skills—verbal, visual, and subliminal—are vital to the cooperative process. These are skills that are generally best acquired through experience rather than training.”

Training in Team Building and Cooperation – A number of respondents suggest that more training is needed specifically in the area of team building and cooperation. According to one individual, “The most important specific area to emphasize during training to facilitate joint-lead and cooperating agency status is team building. Cooperation takes trust. Trust is developed through good communication skills that can be learned during team building exercises.” Suggested topics include the recognition of common objectives; communication skills such as negotiation, alternative dispute resolution, and facilitation; team-oriented problem solving; and the definition of joint success.

Training in Leadership and Roles – Several respondents suggest that the Task Force should encourage training in leadership and roles to facilitate effective collaborative relationships. Suggested topics include leadership and project management skills; group coordination, facilitation, and project management expertise; and the concept of “effective government.” One state agency comments, “The specific area that needs to be emphasized through training and education is the concept of effective government. Whenever one agency is at loggerheads with another, it serves no governmental purpose to resort to stonewalling. Too often the public views government as indecisive or, worse, ineffective because of interagency squabbles.” Respondents suggest that training is also needed to develop mutual understanding of participating agency roles, responsibilities, and decisionmaking processes; as well as mutual understanding of important terms, historic bottleneck issues, and expectations of partner agencies.

Training in the Importance of public Involvement – A few respondents state that training is needed in the importance of public involvement to facilitate effective collaborative relationships. Some suggest that there should be emphasis on the understanding that “the information gathered and decisions made by people who have to live long term with the consequences are the people who will make the best long term decisions for the whole, for the environment, for the species, for the people.”

Training in Other Areas – A few respondents ask the Task Force to encourage training in certain areas such as recent laws and regulations, the use of scientific methodology in effects analysis, situation assessments and diagnostic skills, and the use of Memorandum of Understanding templates.

Training General

802. Public Concern: The CEQ Task Force should encourage training for agency personnel.

TRAINING FOR COOPERATING AGENCIES UNFAMILIAR WITH NEPA

[There is a] lack of . . . NEPA training for the cooperating agencies not already familiar with it. (Timber or Wood Products Industry, Portland, OR - #454.21.30200.XX)

JOINT AGENCY TRAINING FOR LARGE PROJECTS

[B3] Response: For a large project, joint agency training would be good. (Government Employee/Union, Grangeville, ID - #44.14.30300.B3)

803. Public Concern: The CEQ Task Force should encourage training in certain areas to facilitate effective collaborative relationships.

NEPA AS A FRAMEWORK FOR COLLABORATIVE PLANNING

Some of the key areas that should be emphasized in training or collaborative NEPA processes are using NEPA as a framework for collaborative planning. (United States Institute for Environmental Conflict Resolution, Tucson, AZ - #574.32.30300.B3)

THE CONCEPT OF JOINT-LEAD AND COOPERATING AGENCY STATUS

[We] recommend any training developed focus first on the initial concept of joint-lead and cooperating agency status. When all agencies are subsequently approaching this concept from the perspective, then a focus on application and facilitation would be better grounded and better understood during development of formal NEPA documentation. (United States Air Force, Washington, DC - #525.14.30300.B3)

EXAMPLES OF SUCCESSFUL COLLABORATIVE NEPA PROCESSES

Some of the key areas that should be emphasized in training or collaborative NEPA processes are agency-specific case study examples of successful collaborative NEPA processes. (United States Institute for Environmental Conflict Resolution, Tucson, AZ - #574.34.30300.B3)

804. Public Concern: The CEQ Task Force should emphasize experience over training for skill development.

Training may help, but it certainly no panacea in regard to the current set of difficulties. Communication skills—verbal, visual, and subliminal are vital to the cooperative process. These are skills that are generally best acquired through experience rather than training. (Bob Cope, Commissioner, Lemhi County Board of Commissioners, Salmon, ID - #70.15.30300.B3)

Training in Team Building and Cooperation

805. Public Concern: The CEQ Task Force should encourage training in team building and cooperation to facilitate effective collaborative relationships.

The most important specific area to emphasize during training to facilitate joint-lead and cooperating agency status is team building. Cooperation takes trust. Trust is developed through good communication skills that can be learned during team building exercises. (NEPA Professional or Association - Private Sector, Tucson, AZ - #82.13.30300.A1)

AN UNDERSTANDING OF COMMON OBJECTIVES

Question: B3 Response: An understanding of where we are all trying to go together. An understanding that if we provide for a diverse and sustainable forested landscape, all resources benefit. It all comes back to the trees and how we manage them. But first, we need to work on that on ourselves. We haven't done a very good job of that. (Individual, McCall, ID - #35.1.30300.B3)

COMMUNICATION

Communication training should also be stressed, since coordinating and fostering communication between all stakeholders is critical to the overall NEPA evaluation. (Individual, Denver, CO - #619.1.30300.B3)

Training should focus on openness and consensus-building and the acceptance that other points of view are valid, even if that point of view is in conflict with the agencies' or writer's point of view. (Agriculture Industry, Santa Fe, NM - #466.18.30300.B3)

COMMUNICATION SKILLS: NEGOTIATION, ALTERNATIVE DISPUTE RESOLUTION, AND FACILITATION

When training agency personnel for collaborative exercises with other agencies, the standard communication skills should be emphasized: negotiations (opposed to position bargaining), alternative dispute resolution, and facilitation. (Recreational/Conservation Organization, Washington, DC - #89.18.30300.B3)

Training in the various Alternative Dispute Resolution (ADR) procedures including, negotiation, mediation, arbitration (non-binding and binding) and neutral third-party opinion, would be very beneficial. (Utah Department of Natural Resources, Salt Lake City, UT - #565.8.30300.B3)

Some of the key areas that should be emphasized in training or collaborative NEPA processes are how to access and effectively use third-party neutral assistance. (United States Institute for Environmental Conflict Resolution, Tucson, AZ - #574.36.30300.B3)

TEAM-ORIENTED PROBLEM SOLVING

What specific areas should be emphasized during training to facilitate joint-lead and cooperating agency status?

Joint-lead and cooperation agency status can be facilitated through the following: . . .

- Team-oriented problem solving. . . . (United States Environmental Protection Agency, No Address - #299.28.30300.B3)

ORGANIZATIONAL CHANGES TO FACILITATE PROBLEM SOLVING

Some of the key areas that should be emphasized in training or collaborative NEPA processes are organizational change to accommodate collaborative problem-solving and shared decision-making, as well to encourage and reward participation in collaborative processes. (United States Institute for Environmental Conflict Resolution, Tucson, AZ - #574.37.30300.B3)

DEFINING AND SUPPORTING JOINT SUCCESSES

What specific areas should be emphasized during training to facilitate joint-lead and cooperating agency status?

Joint-lead and cooperation agency status can be facilitated through the following: . . .

- Defining and supporting joint successes. (United States Environmental Protection Agency, No Address - #299.28.30300.B3)

Training in Leadership and Roles**806. Public Concern: The CEQ Task Force should encourage training in leadership and roles to facilitate effective collaborative relationships.****LEADERSHIP AND PROJECT MANAGEMENT SKILLS**

Some of the key areas that should be emphasized in training or collaborative NEPA processes are interagency team leadership and project management skills. (United States Institute for Environmental Conflict Resolution, Tucson, AZ - #574.29.30300.B3)

GROUP COORDINATION, FACILITATION, AND PROJECT MANAGEMENT EXPERTISE

Training in group coordination and facilitation is mandatory, as well as project management expertise. (Individual, Katy, TX - #190.1.30300.B3)

THE CONCEPT OF "EFFECTIVE GOVERNMENT"

The specific area that needs to be emphasized through training and education is the concept of effective government. Whenever one agency is at loggerheads with another, it serves no governmental purpose to resort to stonewalling. Too often the public views government as indecisive or, worse, ineffective because of interagency squabbles. Agencies need to realize that we are all part of government and need

to cooperate to accomplish our separate mandates for being. Some agency people view their role with tunnel vision and foster an “us versus them” mentality that precludes meaningful cooperation. In some resource agencies people also view their agency’s regulatory role as the antithesis of cooperation. Transportation agencies also need to know that resource agencies have different values that are as valid as their own. (Wisconsin Department of Transportation, Madison, WI - #214.15.30300.B3)

MUTUAL UNDERSTANDING OF PARTICIPATING AGENCY ROLES, RESPONSIBILITIES, AND DECISION-MAKING PROCESSES

What specific areas should be emphasized during training to facilitate joint-lead and cooperating agency status?

Joint-lead and cooperation agency status can be facilitated through the following:

- Mutual understanding of participating agency roles, responsibilities, and decisionmaking processes. (United States Environmental Protection Agency, No Address - #299.28.30300.B3)

MUTUAL UNDERSTANDING OF IMPORTANT TERMS, HISTORIC BOTTLENECK ISSUES, AND EXPECTATIONS OF PARTNER AGENCIES

What specific areas should be emphasized during training to facilitate joint-lead and cooperating agency status?

Joint-lead and cooperation agency status can be facilitated through the following: . . .

- Mutual understanding of important terms, historic bottleneck issues, and expectations of partner agencies. (United States Environmental Protection Agency, No Address - #299.28.30300.B3)

Training in the Importance of Public Involvement

807. Public Concern: The CEQ Task Force should encourage training in the importance of public involvement to facilitate effective collaborative relationships.

Better people/team skills and more comprehensive training in areas of public outreach as well as involvement/investment in public participation programs (Education!) (Individual, Johnson City, TN - #631.10.30300.B3)

AN UNDERSTANDING THAT THE PEOPLE MOST AFFECTED CAN MAKE THE BEST DECISION

What specific areas should be emphasized during training to facilitate joint-lead and cooperating agency status?

That information gathered and decisions made by people who have to live long term with the consequences are the people who will make the best long term decisions for the whole, for the environment, for the species, for the people. (Individual, Huachuca City, AZ - #372.25.30300.B3)

Training in Other Areas

808. Public Concern: The CEQ Task Force should encourage training in certain areas to facilitate effective collaborative relationships.

RECENT LAWS AND REGULATIONS

Some of the key areas that should be emphasized in training or collaborative NEPA processes are the Freedom of Information Act and the Federal Advisory Committee Act in the context of interagency collaboration, interagency conflict resolution, and enhanced stakeholder participation in NEPA processes. (United States Institute for Environmental Conflict Resolution, Tucson, AZ - #574.35.30300.B3)

Recent laws and regulations and need to involve the public. (Individual, Yuma, AZ - #397.1.30300.B3)

THE USE OF SCIENTIFIC METHODOLOGY IN EFFECTS ANALYSIS

Training should include scientific methodology and its use in environmental effect analysis. (United States Navy, Washington, DC - #568.13.30300.B3)

SITUATION ASSESSMENTS AND DIAGNOSTIC SKILLS

Some of the key areas that should be emphasized in training or collaborative NEPA processes are situation assessments and diagnostic skills to determine if collaboration is possible and appropriate. (United States Institute for Environmental Conflict Resolution, Tucson, AZ - #574.31.30300.B3)

MEMORANDUM OF UNDERSTANDING TEMPLATES

Some of the key areas that should be emphasized in training or collaborative NEPA processes are providing Memorandum of Understanding templates for collaborative planning. (United States Institute for Environmental Conflict Resolution, Tucson, AZ - #574.33.30300.B3)

Best Practices for Intergovernmental Collaboration

Summary

This section includes examples of best practices for intergovernmental collaboration.

809. Public Concern: The CEQ Task Force should review best practices for intergovernmental collaboration.

MEMORANDUM OF UNDERSTANDING BETWEEN THE ARMY AND FOREST SERVICE

In June 2000, the Joint Readiness Training Center-Fort Polk (Army) and Kisatchie National Forest (Forest Service) entered into a Memorandum of Understanding (MOU) to establish procedures for planning and preparing the EIS. The MOU designated the Army as the lead agency and the Forest Service as the cooperating agency, and defined the specific roles and responsibilities of each, including responsibilities for funding. The Memorandum of Understanding also established an Executive Steering Committee (ESC) for the EIS, comprised of selected key environmental staff and individuals with decision-making authority from both the Army and Forest Service. The Executive Steering Committee also included a representative of the military training staff to provide a linkage with the installation proponents for the proposed Army transformation actions. Also specified in the Memorandum of Understanding was a requirement for the Army to designate a joint agency liaison as a member of the Executive Steering Committee to manage the day-to-day aspects of the EIS process and to coordinate among the Army, Forest Service and the contractor tasked with preparing the EIS. A critical aspect of the joint agency liaison role was the responsibility to represent the interests of both agencies in an unbiased manner; therefore, Army and Forest Service consensus was needed on the selection of the liaison. Lastly, the Memorandum of Understanding provided for establishment of inter-agency interdisciplinary (ID) teams to identify issues of concern, collect data and conduct analyses to support the EIS. The Executive Steering Committee has convened several inter-agency ID teams to review specific elements of the proposed action and the associated impacts, and the ID team findings have been incorporated into the analysis of environmental effects as well as recommendation for project designs and mitigations. Under the framework established by the Memorandum of Understanding, the Executive Steering Committee has served as an effective mechanism for managing the lead-cooperating agency relationship between the Army and Forest Service and the overall EIS process. The Executive Steering Committee meets on a weekly basis to develop and refine elements of the proposed action and alternatives, discuss the status and progress of the EIS, identify issues of concern and analysis needs, develop guidance regarding public participation strategies, and provide oversight for all major aspects of the EIS process. Benefits of the Executive Steering Committee and its functions include:

Achieving open dialogue between agencies at the appropriate levels of authority, promoting an open and trusting relationship between agencies, and reducing adversarial interactions, promoting more clear and consistent messages and interactions with stakeholders and other agencies, providing for concurrent rather than sequential inter-agency planning, analysis and decision-making, promoting more efficient use of agency staff and other resources, streamlining of reviews and reducing the overall time

requirements for interagency coordination, supporting early buy-in from both agencies to avoid potential delays and conflicts later in the NEPA process, encouraging compromise and better understanding of the other agency's mission and operational constraints, promoting improved inter-agency decision-making, and fostering post-decision joint environmental stewardship initiatives, including mitigation and monitoring.

To date, there have been no unresolved issues or obstacles between the Army and Forest Service within the case described. The Executive Steering Committee has been successful in resolving differences between the agencies as they have arisen. (Individual, Fort Polk, LA - #654.2-3.30500.B1)

“FACTORS FOR DETERMINING WHETHER TO INVITE, DECLINE OR END COOPERATING AGENCY STATUS”

[The] Council on Environmental Quality recently issued a guidance memorandum on the cooperating agency process that Section of Environmental Analysis [SEA] has found to be very useful. For example, the “Factors for Determining Whether to Invite, Decline or End Cooperating Agency Status” is particularly valuable and will guide Section of Environmental Analysis in determining when to extend cooperating agency status on future rail construction cases. (Surface Transportation Board, No Address - #519.18.30300.B3)

NATIONAL FOREST COUNTY PARTNERSHIP RESTORATION PROGRAMS

Perhaps the Task Force might review the National Forest County Partnership Restoration (CPR) programs that we think prove worthy of broad dissemination. (Multiple Use or Land Rights Organization, Rock Springs, WY - #453.34.30500.B1)

HEALTHY RANGELAND STANDARDS AND GUIDELINES

Best Management Practice Case Study: Catron County Commission engaged in the Bureau of Land Management's Healthy Rangeland Standards and Guidelines, starting in the mid '90s and concluding with the final EIS in 1999. The County was one of eight Cooperating Agencies counties, along with the State of New Mexico as Joint Lead Agency. While the intergovernmental experience was rather long and not without debate, it resulted in an EIS that reflected intergovernmental cooperation and acceptance of the Healthy Standards and Guidelines.

Furthermore, it was the first time in New Mexico where there were buy-in by not only the state government but also by the rural, public land-dependent counties. It was truly an adoptive management process, experiential in process, as in analyses, documentation and in public involvement.

The case study proposal could look into the context that started the process; that is, the aftermath of “Rangeland Reform” debacle, and the start-up of the State Bureau of Land Management Resource Advisory Committee. Its value is in its adoptive and flexible approach to accommodate various government agencies, local governments and tribal entities. The counties would also like to think their participation on the Inter-Disciplinary Team resulted in a better assessment of the human environment, taking into consideration state resources issues and management regimes, as well as a more robust social, cultural, and economic and distributional effects analyses. (Carl Livingston, Chairperson, Catron County Board of Commissioners Official, Reserve, NM - #564.11.30500.XX)

ENVIRONMENTAL ASSESSMENT FOR THE ESTABLISHMENT OF A HORSESHOE CRAB SANCTUARY OFF THE MOUTH OF THE DELAWARE BAY

Best Practice Case 1: Environmental Assessment for the Establishment of a Horseshoe Crab Sanctuary off the Mouth of the Delaware Bay

Project: Creation of a Horseshoe Crab Sanctuary off the mouth of Delaware Bay; Environmental Assessment for Atlantic Coastal Fisheries Cooperative Management Act Regulations for a Closed Area to Fishing for Horseshoe Crabs in the Exclusive Economic Zone.

Category: B-Federal and Inter-governmental Collaboration

Agency: National Marine Fisheries Service (National Marine Fisheries Service), National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

Practice: Collaboration with coastal states in developing the environmental analysis (EA) for action to establish the horseshoe crab sanctuary and participating in the NEPA process.

Dates: Environmental Assessment Finding of No Significant Impact signed by the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, December 20, 2000.

Background: Based on a request from the Atlantic States Marine Fisheries Commission (ASMFC), under authority of the Atlantic Coastal Fisheries Cooperative Management Act, National Marine Fisheries Service worked with State partners to establish a horseshoe crab sanctuary off the mouth of Delaware Bay. The intent of this sanctuary was to protect a portion of the horseshoe crab population from the impacts of fishing. The horseshoe crab fishery provides crabs for bait for eel and whelk fisheries and for biomedical purposes. Horseshoe crabs also provide a valuable ecological role as their eggs are an important food source for migratory birds as they move north to nesting areas in the spring.

Historically, horseshoe crabs were managed by individual States until 1998 when the Atlantic States Marine Fisheries Commission adopted an Interstate Fishery Management Plan for Horseshoe Crabs in response to concerns of possible localized declines in the Atlantic Coast horseshoe crab stock. The Atlantic States Marine Fisheries Commission approved and implemented Addendum 1 to the Interstate Fishery Management Plan for horseshoe crab in February 2000. Its intent is to protect and maintain the horseshoe crab spawning stock at levels that can sustain fisheries and that will provide an abundance of crab eggs as an important food source for migratory shorebirds at a critical time and place during their spring migration to northern nesting grounds. In addition to the several management measures that the Interstate Fishery Management Plan directs the Atlantic coastal states to implement in their waters, Addendum 1 requests that National Marine Fisheries Service establish an offshore sanctuary in Federal waters within a 30-nautical mile radius off the mouth of Delaware Bay.

The Atlantic States Marine Fisheries Commission requested that National Marine Fisheries Service establish a crab sanctuary in the United States Exclusive Economic Zone off the mouth of the Delaware Bay. After considering this request, National Marine Fisheries Service determined that the proposed closed area is a risk-averse conservation measure that is designed to protect the horseshoe crab resource in the Delaware bay area, would minimize the risk to the horseshoe crab resource from over fishing, and is based on the best available scientific information.

Also, National Marine Fisheries Service concluded that the closed area, in conjunction with current State laws, including the States' implementation of their commercial quotas under Addendum 1, is a necessary part of a comprehensive management program controlling fishing effort on horseshoe crabs in near shore areas in the United States Exclusive Economic Zone off the Delaware Bay. Addendum 1 and its implementing measures were intended to protect horseshoe crabs by reducing fishing effort on both male and female crabs when they are concentrated in the closed sanctuary area and by reducing State crab harvesting quotas.

Project Description: In 2000, National Marine Fisheries Service met with the State marine fisheries directors of Maryland, Delaware, and New Jersey to determine how best to establish the sanctuary off Delaware Bay. In developing regulations to implement the sanctuary, National Marine Fisheries Service initiated preparation of an environmental assessment (EA). National Marine Fisheries Service obtained most of the data used in the biological and economic analyses of the likely impacts of the sanctuary from the States. Fishery independent data on horseshoe crabs was collected during the National Marine Fisheries Service Northeast Fisheries Science Center annual trawl survey. The States provided data from numerous State surveys and studies and from industry records. National Marine Fisheries Service also worked closely with the United States Fish and Wildlife Service in assessing the probable environmental impacts of proposed and alternative measures.

National Marine Fisheries Service published proposed regulations to establish the sanctuary on October 16, 2000 (65 Federal Regulation 61135). Final regulations were issued February 5, 2001 (66 Federal Regulation 8906). The final rule prohibits fishing for horseshoe crabs in the United States Exclusive Economic Zone area encompassing a 30-nm radius seaward from the mouth of the Delaware Bay (closed area); prohibits possessing horseshoe crabs on vessels with trawls or dredges within the closed area; and requires that horseshoe crabs caught in closed areas incidental to other fishing operations be returned to the water. Based on the Environmental Assessment, the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, concluded that the subject regulatory action will not have a significant effect on the human environment; the Finding of No Significant Impact statement was signed December 12, 2000.

Value as a Practice: Results: This effort resulted in better constituent, industry, and State buy-in than if National Marine Fisheries Service developed measures on its own, especially since the source of the majority of the data needed to evaluate the environmental impacts came from the states.

Challenges overcome: Getting the States to work with their fishing industries; developing a regulatory approach that protected the horseshoe crab, but allowed for other fisheries to continue within the sanctuary area closed to fishing for horseshoe crabs. Challenges remaining: Developing additional field sampling programs to determine better the status of the horseshoe crab resource and the impacts of the sanctuary on crab stock status and on the fishing industry. Meeting these challenges will necessarily entail close collaboration with key States in all aspects of the resource-monitoring program and in assessing the effects of the sanctuary.

Source of information and references: The Atlantic States Marine Fisheries Commission, the Interstate Fishery Management Plan for Horseshoe Crab, Delaware Department of Fish and Wildlife, New Jersey Fish, Game and Wildlife, Maryland Department of Natural Resources, and United States Fish and Wildlife Service.

Recommendation as a best practice: National Marine Fisheries Service selected this project because it demonstrates full and timely collaboration among two Federal agencies and a number of State agencies involved with the management of living marine resources. All involved parties collaborate in preparing the Environmental Assessment. National Marine Fisheries Service considers this action a good example under the Council on Environmental Quality Task Force Study Area B. (National Oceanic and Atmospheric Administration, Washington, DC - #637.21-25.30500.XX)

MAGNUSON-STEVENSON ACT REQUIREMENTS REGARDING ESSENTIAL FISH HABITAT

Best Practice Case 2: Magnuson-Stevens Act Requirements Regarding Essential Fish Habitat (EFH); National Marine Fisheries Service Essential Fish Habitat Regulations and Collaborative Essential Fish Habitat Consulting Requirements for Other Federal Agencies

Project: Implementing the Magnuson-Stevens Fishery Conservation and Management Act mandate for Federal agencies to consult with National Marine Fisheries Service regarding any action that may adversely affect "essential fish habitat" (EFH)

Category: B-Federal and Inter-governmental Collaboration

Practice: To streamline Essential Fish Habitat consultation procedures by combining with other Federal agencies' existing NEPA practices, such as preparing environmental documents.

Agency: All Federal agencies, with focus on the Army Corps of Engineers and the Environmental Protection Agency

Involved Parties: Many private sector groups through their interest in both the National Marine Fisheries Service regulations to implement the Essential Fish Habitat mandate and how those regulations are applied to thousands of individual Federal actions each year

Dates: Began in 1996 and is ongoing

Context and Background: Under the Sustainable Fisheries Act of 1996, Congress mandated National Marine Fisheries Service to designate Essential Fish Habitat for more than 700 commercial and recreational fish species covered by the Magnuson-Stevens Act. Once Essential Fish Habitat was designated, Congress mandated that Federal agencies "consult" with National Oceanic and Atmospheric Administration to ensure that the best available scientific information on Essential Fish Habitat was considered in any funding, permitting, or licensing decisions that may adversely affect Essential Fish Habitat. In 2002, National Marine Fisheries Service consultation process for maximum efficiency and effectiveness, with the objective of meeting Congressional intent without adding unnecessary administrative burdens to other agencies' existing funding, permitting, and licensing procedures. (See Final Regulations for Essential Fish Habitat at 67 Federal Regulation 2343; January 17, 2002.

Project Description: This project has been underway since 1996, with initial implementation in 1998 when Essential Fish Habitat was first designated for fisheries managed under the Magnuson-Stevens Act. As encouraged in the Essential Fish Habitat regulations, National Marine Fisheries Service has worked closely with other Federal agencies to combine Essential Fish Habitat consulting procedures with their existing procedures. As a result of those discussions, National Marine Fisheries Service has signed formal agreements with regional and headquarters offices of Federal agencies to reaffirm how

NEPA can be used as a primary tool to streamline Essential Fish Habitat consultations and improve decisions that may affect Essential Fish Habitat. Those agreements or “findings” document how NEPA is being used to achieve the intent of Essential Fish Habitat requirements under the Magnuson-Stevens Act.

Value as a Practice: Results: This practice has enabled National Marine Fisheries Service and other Federal agencies to comply with Magnuson-Stevens Act without developing a new administrative process that could have duplicated existing processes and added significant delays to Federal decisions. The process strengthens environmental reviews by adding important information on fish habitat, as required by Magnuson-Stevens Act, while maintaining all of the NEPA-streamlined process that saves time, money, and effort.

This new Essential Fish Habitat consultation process has been extremely well received by other agencies, principally the Army Corps of Engineers, whose programs generate the vast majority of Federal actions that prompt Essential Fish Habitat consultations. There have been none of the “horror stories” or “train wrecks” predicted by some opponents who envisioned rampant delays as Congress and National Marine Fisheries Service attempted to increase the relative importance of fish habitat information in the balancing tests performed by Federal decision-making agencies.

Challenges overcome: The initial impediment was one of scale. National Marine Fisheries Service needed to negotiate “findings” with regional and headquarters offices of key Federal agencies whose actions may adversely affect Essential Fish Habitat. Out of total of 48 findings negotiated between 1998 and April 2002, 25 rely on agency’s NEPA compliance procedures as a primary tool to streamline the Essential Fish Habitat consultation process. That scale remains valid since NEPA procedures remain many agencies’ tool of choice for Essential Fish Habitat consultation actions. Another impediment was information exchange. National Marine Fisheries Service Essential Fish Habitat designation process resulted in assembling the best set of scientific data and information ever collected on marine fish and their habitat needs. That information is now used by agencies as they analyze whether their actions may adversely affect Essential Fish Habitat. National Marine Fisheries Service continues to work on a web-based Geographic Information System that will enable agencies and other to gain direct access to that information, thereby further improving the consultation process.

Challenges remaining: The Geographic Information System products described in the preceding paragraph remain a challenge, but progress is being made in their development. In most United States waters, Geographic Information System products enable agencies and other to access maps, text, and tables depicting Essential Fish Habitat by life stage and species. As might be expected for this enormous list of species, there are data gaps that make specific Essential Fish Habitat designations difficult and Essential Fish Habitat consultations more qualitative. National Marine Fisheries Service has greatly increased its research on life history needs of those species whose Essential Fish Habitat designations need to be strengthened with more complete information. National Marine Fisheries Service is also expanding its research and partnerships with other agencies to understand the effects of various human actions on Essential Fish Habitat, thereby assisting efforts to understand the environmental consequences of Federal actions related to fishing and non-fishing activities. And, finally, National Marine Fisheries Service continues to work with other agencies to ensure that their NEPA documents include a full range of alternatives and conservation recommendations to minimize impacts to Essential Fish Habitat.

Validation: This project was validated based on its track record. Several years of implementation have shown that NEPA and Essential Fish Habitat procedures can be merged, that the public and Federal agencies can benefit, and that the result is a more robust NEPA analysis that helps to improve decision making with respect to the marine environment.

Recommendation as a best practice: This best practice case was recommended by Tom Bigford, Chief, Division of Habitat Protection, Office of Habitat Conservation, National Marine Fisheries Service, based on years of effort by the National Marine Fisheries Service Essential Fish Habitat Team and its partners in other Federal agencies. The case was also suggested by Ramona Schreiber, Office of Strategic Planning, National Oceanic and Atmospheric Administration, and Davis Hays, Office of Sustainable Fisheries, and National Marine Fisheries Service. (National Oceanic and Atmospheric Administration, Washington, DC - #637.26-31.30500.XX)